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CENTRE FOR A
Better Britain



Resetting the EU reset

Author: Christopher Howarth

"We could not let matters rest there"

Shadow Foreign Secretary Rt. Hon. William Hague MP 12th November 2007
in response to the potential ratification of the EU Reform Treaty.

Foreword

The future of the United Kingdom's relationship with the European Union deserves serious and sustained examination. The agreements made since our departure, together with those now being negotiated, will present future governments with choices which require careful preparation.

Christopher Howarth's paper addresses questions that anyone contemplating changes to those arrangements will need to consider. What should Britain seek to achieve? Which changes can be secured by agreement? What alternatives would be available if agreement proved impossible? And what consequences might follow?

These questions require clear political objectives, rigorous legal analysis and a practical understanding of the interests of all concerned. The implications for Northern Ireland and the constitutional integrity of the United Kingdom warrant particular attention.

The arguments and proposals in this paper are the author's own. Readers will reach their own judgments on them, as I do. I welcome its contribution to a debate which should take place well before the decisions fall to be made.

Rt. Hon. David Jones,

Former Minister of State for Exiting the European Union

Preface

We have been here before. In 2009 the then Labour Government ratified the Lisbon Treaty. The treaty had been strongly opposed by the Conservative opposition who objected to its surrenders of sovereignty. However, with the ratification of the treaty the Conservative party was left with a fait accompli, a treaty that was in force yet they strongly opposed.

What did the Conservatives do? William Hague stated the Conservatives 'could not let matters rest there', setting off a round of speculation that left the incoming Conservative Government in 2010 with a problem.

Today, we have a series of UK-EU agreements that both the Conservatives and Reform UK object to in differing measures. We also have the potential for further EU agreements across a range of topics - the 'EU reset' - that the centre right opposition parties have pledged to oppose and reverse.

A new centre right UK government will therefore be presented with a similar problem to 2010 - a series of existing UK-EU treaties that constrain their actions in key policy areas which they have pledged to revisit and/or repeal.

These UK-EU treaties - primarily the 'Withdrawal Agreement' (WA) and the 'Trade and Co-operation Agreement' (TCA) were the product of long negotiations and were carefully put together by the EU legal service in order to make it difficult and costly for the UK to leave.

The UK-EU treaties will therefore present numerous legal and diplomatic problems for an incoming centre right government. While the TCA has an exit clause, the original Withdrawal Agreement - that includes the contentious 'Northern Ireland Protocol' - has no explicit 'exit clause' and the treaties are replete with 'rebalancing' and compensation clauses that might be costly for the UK to trigger.

In addition, the UK's exit from the European Convention on Human Rights will present its own political issues in an EU context primarily for the Northern Ireland Protocol and crime and policing cooperation.

However, the UK-EU relationship has evolved in the years since Brexit. The dynamics of 2016, a weak UK government and a determined EU administration no longer hold. A UK government determined to pursue its own interests, while recognising and accommodating the vital interests of the EU, should be able to make real progress on matters that effect the UK.

This paper aims to set out some of the legal mechanisms and arguments a UK government will have to navigate in order to fulfil their stated aims. This will require legal skill as well a major political and diplomatic effort. For this to work an incoming government needs a clear plan, mandate and determination.

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Executive Summary

We are at a decision point. The series of post Brexit treaties that have so far governed EU-UK relations have run up against both Conservative and Reform UK party policy. The two parties, highlighting both financial and constitutional issues with the existing treaties have pledged to renegotiate or resile from large areas of agreed UK obligations. On top of that both parties have said they will seek to undo the yet to be agreed 'EU Reset'.

A new government will face a choice: What areas will they choose to renegotiate in the current EU treaties and how much political capital are they willing to expend. Which UK policy areas should be prioritised in any renegotiation, be it energy policy, fishing, benefits provision to foreign nationals or Northern Ireland. Which principles should a new government take to their dealings with the EU and the existing agreements?

The UK-EU trade agreement – the Trade and Cooperation Agreement – already grants reciprocal tariff free access to the EU single market, this is the closest free trade agreement the EU has yet signed, closer than that with the comparable deal with Canada. The only closer agreements the EU has ever signed involve the EU imposing its laws and regulations on states in return for reduced border compliance – typically with aspiring member states. The EU having moved away in the 1980s from World Trade Organisation principles of 'mutual recognition' of outcomes for an insistence on harmonisation of regulation – where only EU law is acceptable. This will always limit the potential depth of any trade relationship.

However, despite the wide scope of the TCA there remain areas where it could be improved and reviewed. However, rather than iron out residual problems or pursue genuine UK economic interests the current government has chosen to mount an 'EU reset' that moves closer to unilateral alignment with EU policy accompanied by acceptance of harmonised EU law in a range of areas from food regulations, energy policy, while signing the UK up to schemes such as Erasmus and youth mobility.

The Conservatives and Reform UK have already pledged to undo the current 'reset' and on top of that have proposed a range of policies that conflict with the EU treaties – the provision of benefits and housing to foreign nationals, leaving the ECHR, rolling back any further alignment with the EU as well as to differing degrees revisiting the Northern Ireland Protocol.

This paper aims to set out; what are the UK's economic and democratic interests regarding the EU and how to set out a renegotiation to accommodate UK interests and domestic political priorities.

The paper sets out three scenarios:

- One, a light renegotiation where the UK has limited goals and works within the structure of the agreements, for instance giving notice that the UK will not renew programs and letting them time out.
- A second scenario where the UK does seek to renegotiate substantial policy areas, such as those that may be included in the current 'EU reset'; Energy policy, the CBAM, the SPS agreement and the rights of EU citizens with 'settled status'.

- Lastly, a full renegotiation on the basis of achieving an end state of sovereign equals. This would include revisiting areas of strong EU political interest, the Northern Ireland Protocol & EU Fishing rights, issues which, unless handled carefully, could bring it into a serious conflict with the EU.

The paper seeks to shed light on how such renegotiations may proceed, the interlinking treaty articles, the rebalancing clauses and exit clauses where one change might trigger a reaction by the EU. In addition, this paper sets out some areas that are not currently part of the 'EU reset' talks that should be put forward as limited UK objectives.

The paper argues that any government committed to changing the UK-EU relationship needs to avoid the mistakes of the past, it needs to plan, ensure internal agreement, and accept that the EU may initially be prepared to escalate any confrontation.

However, if the UK approaches the UK-EU relationship with resolve and invests political capital in a solution there is every hope for success, not just in terms of undoing the costs of the current 'reset' but revisiting the mistakes of 2016. Resolving the more contentious issues (for the EU) of the Northern Ireland Protocol, Fishing and EU Citizens Rights should now be possible in a way that it was not in the past. Times have moved on, and the UK/EU relationship has evolved. There is no reason to believe that solutions proposed in the future would not get a different hearing than they did in the past by a different UK government.

So, the UK should attempt a renegotiation focused on UK interests while putting forward constructive proposals to meet genuine EU concerns. It should also plan for a worst-case scenario where the EU decides to escalate any confrontation. The best way to prevent that is to plan for its eventuality, in order to ensure that it is avoided.

Background: How we got here

We have been here before

The UK's relationship with the EU is a long and storied history. The arguments over the balance of 'pooled' sovereignty versus local democratic decision making - 'subsidiarity' - played out over the 1990s and 2000s through battles over various EU Treaties, Maastricht, Nice, Amsterdam culminating in the battles over the Lisbon Treaty.

The final ratification of the Lisbon Treaty (aka the EU Constitution) in 2009 by the Czech Republic's President Klaus left the opposition Conservative party in a difficult place. Having promised a referendum on the Lisbon Treaty it was faced with both a ratified non reversible legal fact and a British electorate unreconciled to its fate. This led to the commitment in 2007 by the Conservative Opposition Shadow Foreign Secretary to 'not let matters rest'. And rest they did not. An attempt at renegotiation swiftly led to the holding of the referendum to leave the EU in 2016.

It was the UK state's inability to protect its own sovereignty or identify its own interests when it was no longer a member of the EU club that led to the next chapter in the UK-EU drama – the battles over the Chequers deal, that led to the fall of Theresa May. However, the desire of the UK state to follow EU laws rather than set its own policy background was not resolved with the departure of Theresa May. Her Northern Ireland 'backstop' reappeared in Boris Johnson's deal putting Northern Ireland firmly under the regulatory control of the EU. The EU makes the law in some 300 areas creating a regulatory border in the Irish Sea. Promises to renegotiate it were quietly forgotten.

Further UK concessions in areas such as fishing, EU citizens' rights and the legal basis and cost of joining EU policy areas led to a deeply unsatisfying relationship.

The original negotiating sin

The period of UK political history that followed the 2016 referendum was marked by a profound political and diplomatic UK state failure. It should have been no surprise that a political establishment that had never wanted to leave the EU was singularly ill equipped to manage the process of leaving the EU the electorate had tasked them with.

However, Britain's failure in the negotiations with the EU to identify and protect UK interests stemmed from a deeper intellectual failure that has continued into the present. A belief is that it was a mistake to leave the EU and that the UK should and will someday rejoin, led to a belief that sovereignty was of limited concern when placed against 'damage limitation' and the chance to remain in EU policies.

The UK's political class's failure to understand the EU's motives coupled with a political desire to seek an internal 'compromise' in a divided British polity, when a compromise was never on offer played out from 2016 to 2022.

The internal 'compromise' was to agree to leave the EU in the strict legal sense while remaining in as much of the EU in practice as possible. The focus on keeping everything largely the same led to

major compromises on sovereignty. This was most notable in the way the UK negotiators approached the issue of the Northern Irish border where the EU's legal order and the desires of the Irish government were prioritised over those of the UK's own internal market and legal order/sovereignty. In fact, the UK even accepted the EU's 'sequencing' accepting upfront the EU's demands in terms of Northern Ireland and other EU interests, before any UK interests were even discussed.

We were therefore left with the 'Withdrawal Agreement' – which covers a variety of contentious issues and yet almost uniquely for an international treaty has no explicit exit clause. On top of this we have a trade agreement – the TCA - that sets out a free trade agreement as well as a controversial division of the UK's fishing resources the UK can leave the fishing chapter on nine months' notice, but in return the EU ensured it would collapse the rest of the TCA.

The Withdrawal Agreement was not only expensive in monetary terms but signed away the UK's right to legislate over Northern Ireland in over 300 areas of law while allowing the EU to create an internal UK customs border. The imbalance in Northern Ireland is matched in other areas, the rights of EU citizens living in the UK will be governed by the EU's court (the ECJ) and even such EU interests as the protection of EU 'Geographical Indicators' (GIs) for foods are protected by the EU's own Court whereas UK ones are not protected by the UK's court.

The TCA, although more sensitive to concerns about sovereignty was nevertheless skewed towards EU interests, notably in terms of rules of origin, EU fishing rights and EU agricultural exports. This was unsurprising given the UK's reduced negotiating leverage - the UK Parliament had demanded a deal at any cost.

The Labour Government inherited these two agreements with the EU. They were suboptimal at best and a serious challenge to UK autonomy in terms of the Northern Ireland Protocol at worst.

However, instead of identifying actual UK interests to pursue (say on rules of origin, illegal migration and Northern Ireland) the UK is repeating the diplomatic and negotiation missteps. The current 'reset' is not seeking to correct the mistakes of the past negotiations that a genuine 'reset' based on the relationship as one of two sovereign equals would do. The current plans have involved yet more UK concessions on sovereignty, fishing resources, payments to joint EU programs and most importantly over the UK's right to legislate in key areas such as its own food regulations and energy.

The combination of the existing agreements and the new 'reset' will therefore present a range of challenges to a future government.

- What areas should the UK prioritise in a future negotiation with the EU?
- Is a renegotiation possible and if so how to undertake such a renegotiation?
- If a negotiation is not possible, should the UK unilaterally exit the treaties?
- What (if any) are the vital interests the UK needs to safeguard in any 'reset'?

Is a renegotiation already inevitable?

The two main opposition parties - the Conservatives and Reform UK - have now committed to differing degrees of renegotiation and/or to resile from the existing treaties and what may come out of the current renegotiations.

The Conservative Deputy Leader, Alex Burghart MP has been categoric about the current EU reset stating that *"A future Conservative government cannot and will not be bound by the terms of the EU Reset - and will reverse them."*[1] Reform UK has also pledged to undo any further alignment and major elements of the existing agreements, fishing and Northern Ireland.

Both parties have also pledged to adopt policies that would contradict the current treaties, whether knowingly or not in the area of EU Citizens' rights. These EU rights come into conflict with both the Conservative Party and Reform UK Party policies on state benefits, namely:

- Conservatives pledge to remove Council Houses from foreign nationals
- Reform UK Party pledge to remove benefits from foreign nationals.

In addition, both parties have pledged to leave the ECHR which would engage the UK-EU treaties in areas such as Northern Ireland and Justice and Home Affairs Cooperation.

The Reform UK Party for its part has pledged to go further still and renegotiate the original Withdrawal Agreement in terms of the Northern Ireland Protocol / Windsor Framework. With Danny Kruger MP, Head of Preparing for Government for Reform UK, writing that *"Only a Reform government will end the sea border and restore British sovereignty to the whole of the United Kingdom."*[2]

On a smaller scale the EU Withdrawal Agreement has already shown potential to conflict with the policy of the Labour party in terms of state aid and VAT. In the case of the tobacco products, legal challenges to the 'generational ban' based on the Tobacco Directive in Northern Ireland.

If either of the main opposition parties were to form a future government there will therefore inevitably be some form of renegotiation or conflict with the EU across a range of policy areas.

The EU treaties

An incoming future government will inherit two main UK-EU treaties and membership of the interlinked ECHR.

A. The EU Withdrawal Agreement
B. The Trade and Cooperation Agreement.
C. The ECHR - is not an EU treaty but is relevant to any renegotiation.

[1] 16th September, 2026, during a speech at Policy Exchange
[2] https://thecritic.co.uk/giving-back-control/

The Withdrawal Agreement (WA)

This agreement was struck in 2019 by the then Prime Minister Boris Johnson building on the work of his predecessor Theresa May's deal, which it largely resembles. The differences between the two relate to the absence of a (supposedly temporary) all UK Customs Union present in Theresa May's deal and the absence of the UK Chequers White Paper aspiration to negotiate a 'Common Rule Book', i.e accept EU laws throughout the UK. What was left was the Northern Irish regulatory and customs border. The Theresa May 'Chequers' aspiration for a 'common rule book' where the EU sets UK laws, in return for a reduction in border regulation, is what has reappeared with the current 'reset'.

Much of the WA contained temporary measures relevant to exit, such as the transition period and related payments, but it does contain a number of significant residual elements:

- The Northern Ireland Protocol, now renamed the Windsor Framework.
- EU Citizens Rights in the UK under the legal protection of the ECJ.
- Geographical Indicators (the one-sided protection of EU GIs in EU law)
- Finance (much of it now paid to the EU for residual commitments).

The Trade and Cooperation Agreement

This agreement was negotiated separately and subsequent to the WA. It is a stand-alone document, not directly linked to the WA and does not include the direct jurisdiction of the European Court of Justice or any explicitly legally unbalanced conditions. What it does include are trade measures that are reciprocal in nature but in practice heavily benefit the EU.

- Zero tariffs on goods – where the UK runs a huge trade deficit with the EU
- Relatively restrictive Rules of Origin and cumulation rules that benefit the EU with its larger supply chains.
- The Energy Chapter – the EU is a net exporter of electricity to the UK.
- Fishing – the EU retained unchanged access to the UK's fishing resources until 2038.
- Crime and policing cooperation under ECHR.

The UK's most profitable trade with the EU, that of services and financial services in particular are absent as were many other smaller potential UK negotiating aims.

The European Convention of Human Rights (ECHR)

In addition to the two main UK-EU agreements the ECHR has a bearing on two aspects; the Northern Ireland Protocol, where some argue that the incorporation of the ECHR underpins the agreement and the TCA, where exit from the ECHR could (but doesn't have to) trigger the EU to terminate justice and home affairs cooperation.

While the ECHR is not fundamental to the EU agreements a UK exit from the ECHR may impact the negotiation dynamic regarding the UK-EU agreements and lead to EU calls to terminate UK-EU cooperation in areas of crime and policing.

What already needs renegotiation?

Residual problems with the Withdrawal Agreement

The original UK-EU negotiations left the UK with a number of unresolved issues spread across two main treaties.

The Northern Ireland Protocol / Windsor Framework

Firstly, the Withdrawal Agreement which includes the NIP. The NIP, now relabelled the Windsor Framework, is problematic in two main ways. It is not democratic in that it applies EU law to Northern Ireland in some 300 areas without any say by either the UK or NI devolved assembly.

The NIP was an early-stage concession by Theresa May fulfilling an EU condition for allowing the talks on trade to progress – the UK having accepted both the format of leaving the EU (article 50) and more damagingly the EU's 'sequencing' where the EU sought to achieve its main objectives before moving onto discuss anything else.

The difficulty in escaping the NIP is that there was *no exit clause* in that agreement.

What we are left with is the EU imposing its laws (and Customs Union) on Northern Ireland over a range of trade goods and in return allowing the new EU external frontier in the Irish Sea to be relatively low friction. This is a constitutional and democratic issue for Northern Ireland and for the UK as a whole.

There were many alternatives to the NIP proposed at the time and as time and technology has progressed these alternatives should now be revisited.[3] A low friction border on the actual Northern Irish border is now perfectly possible, via technology of 'mutual enforcement' and should be tabled as proposals. If no negotiation is possible then that could be implemented unilaterally.

EU Citizens Rights

EU Citizens resident in the UK, or with 'EU settled status' had their rights in the UK protected under EU law. These rights, which sometimes go further than other non-UK citizens' rights and even UK citizens' rights in some respects (for instance in regards for the right to residency of foreign spouses). These rights may come into conflict with policies aimed at social housing allocations, access to benefits or deportation at the end of prison sentences.

[3] See for instance: https://christopherhowarth.uk/wp-content/uploads/2021/04/ERG-Report-on-the-Northern-Ireland-Protocol-FINAL.pdf

Geographical indicators

Not the most important issue but a good example of the non-reciprocal nature of the Withdrawal Agreement that should be corrected – EU Geographical indicators – mostly foods and drinks – are protected in EU law applying within the UK, whereas UK geographical indicators are not protected in UK law within the EU.

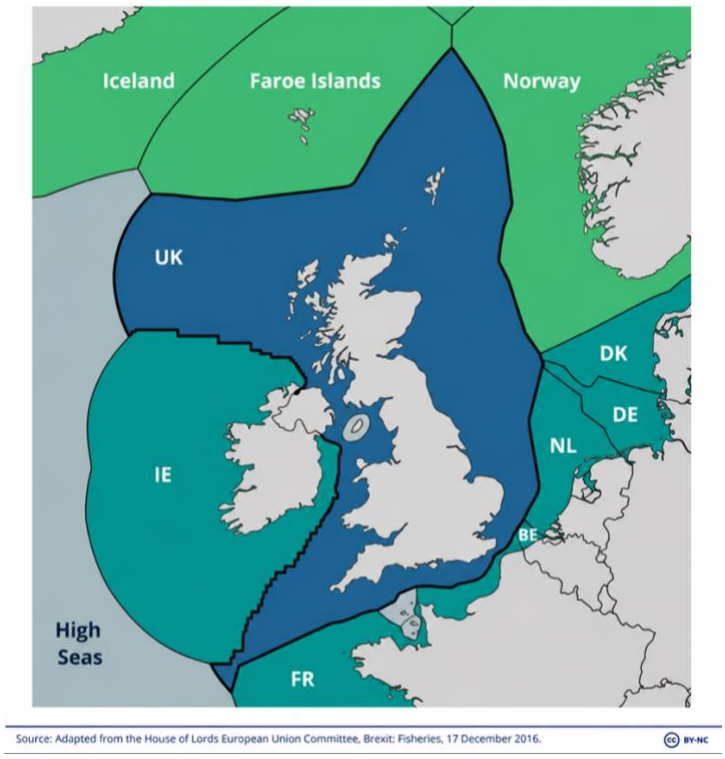
Residual problems with the Trade and Cooperation Agreement

Fishing

While the UK was a member of the EU it was subject to the Common Fisheries Policy and had to open its waters up to vessels from EU states. This was a particularly bad deal for the UK and one that drove anti EU feeling in many fishing communities in the UK.

On exit from the EU the EU was keen to safeguard its economic interests in UK waters, valued at well over a £1bn a year. This they did in terms of a transitional agreement that phased out the EU's interests in UK waters over time. This was not the clean break that many UK fishermen wanted to see, but was a start that could have led to the UK regaining the fisheries lost in 1973.

Exclusive Economic Zones of the UK and neighbouring coastal states



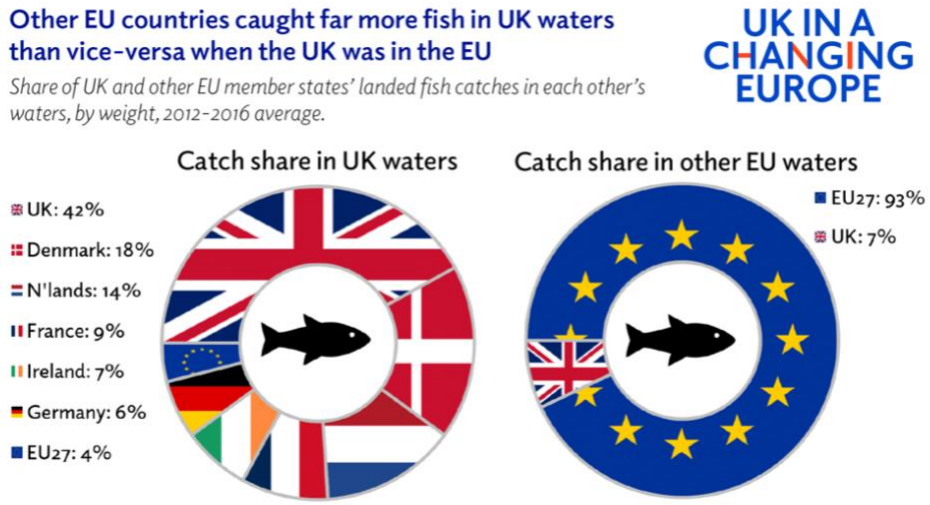
Source: Adapted from the House of Lords European Union Committee. Brexit: Fisheries. 17 December 2016

Unfortunately, the Starmer government agreed in 2025 to a 12-year extension for EU fishing vessels until June 30th 2038 as a condition set by the EU to open negotiations on the 'Reset'. This means an incoming government will not be able to oversee a rejuvenation in the UK's fishing industries unless they repudiate the agreement.

As the EU has itself said of the 2025 agreement:

> *"This agreement ensures EU fleets can fish up to 288,000 tonnes (in UK waters), worth over €1.2 billion. It holds particular significance as the stocks covered comprise the bulk of the EU's shared resources with third countries in the North-East Atlantic."*[4]

While UK vessels do get some access to EU waters in return it is a fraction of the value. The UK in a renegotiation may aim to cancel this agreement and take back the quotas given to the UK in its own waters. It may also wish to change the nature of the ownership of the UK quota that is often owned by EU companies and landed directly into the EU.



Source: UK in a Changing Europe based on House of Commons' library data.[5]

Level playing field and 'State Aid' clauses

'Level Playing Field Clauses' are present in the TCA and cover a range of issues such as subsidies, taxation and labour and environmental law, (including commitments to the ETS). While these are not directly enforceable by the EU in their own Court, they do pose a challenge to the UK were it to decide to commit to changes to its economy in terms of an industrial policy.

The EU does however have direct control over 'state aid' (which includes state subsidies, taxation and industrial policy) in Northern Ireland via the NIP where the European Commission could take the UK to its own court and levy fines. This Northern Irish specific measure does have potential 'reach back' into the rest of the UK as it covers anything that might distort trade across the Irish Sea border – something that the EU interprets expansively. Article 10 of the NIP which states *"EU State aid rules will continue to apply to the UK in respect of measures which affect trade in goods or the electricity market between NI and the European Union."*[6]

[4] https://ec.europa.eu/commission/presscorner/detail/es/ip_25_3009
[5] UK in a Changing Europe: https://ukandeu.ac.uk/explainers/explainer-fisheries/
[6] https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework

Gibraltar

Although now placed into a stand-alone treaty, the UK has agreed to let Gibraltar become a part of the Schengen area and EU customs area for the first time. This now means that British citizens landing in Gibraltar will be met by Spanish border guards and will be treated as staying in Schengen despite never leaving British territory.



New problems arising out of the 'EU reset'

In addition to legacy issues going back to the UK's exit we are seeing the creation of new problems, new imbalances and non-reciprocal agreements in the form of the 'EU reset', that a future government may revisit.

SPS Alignment (Sanitary Phytosanitary ergo food regulations)

The Labour Party Manifesto

The main part of the UK Government's planned 'reset' is focused on the alignment of UK food and agricultural regulations with EU food rules - as signposted by their election manifesto. However, the 'veterinary agreement' in the manifesto:

"We will seek to negotiate a veterinary agreement to prevent unnecessary border checks and help tackle the cost of food; will help our touring artists; and secure a mutual recognition agreement for professional qualifications to help open up markets for UK service exporters." [7]

However, what has emerged from the negotiations is very different from a standard 'veterinary agreement'. Many states have veterinary agreements with the EU including New Zealand. New Zealand's deal with the EU allows for the mutual recognition of equivalence of sanitary phytosanitary (SPS) measures – food standards. The EU and New Zealand therefore do not have to apply the same SPS rules but agreed a list of products where they recognise each other's standards and so can reduce the number of inspections and associated paperwork.

The current UK-EU talks are not seeking a veterinary agreement but something quite different, the harmonisation of rules around the external UK border where the UK follows EU law as the EU adapts and changes it i.e dynamic alignment. There are some potential reasons for the current Government's focus on food regulations.

Reasons in favour:

- It is something the EU may agree as it's in the EU's interests. If agreement is an end in itself.
- It might help alleviate some checks on GB goods going into Northern Ireland
- The EU might relent on the export of some SPS reliant goods – such as shellfish.
- UK exporters of food products get reduced costs on paperwork, such as Export Health Certificates and Phytosanitary certificates.
- The EU might stop unnecessary checks and delays on UK agrifood exports entering the EU. Under WTO rules the EU is already obliged under the WTO to accept the SPS measures of exporting nations as equivalent if they achieve the same level of health protection.

Reasons against

- Trade agreements are usually based on 'mutual recognition' of each other's regulatory regime, and an expectation that a trade partners rules will not change. If the UK agrees to follow EU food regulations dynamically – i.e follow any future changes – then the UK will find it difficult to

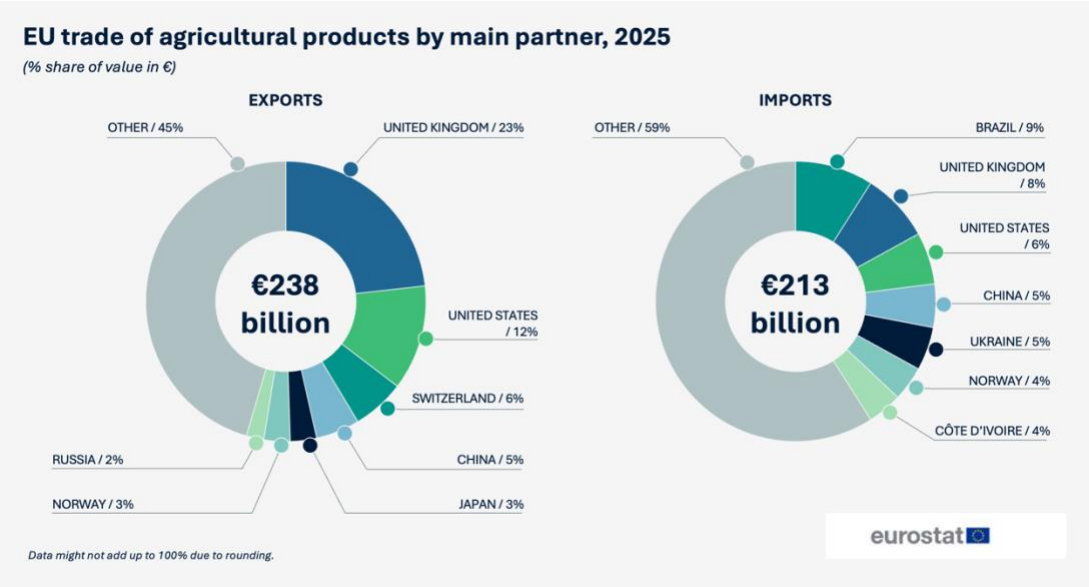
[7] https://labour.org.uk/wp-content/uploads/2024/06/Change-Labour-Party-Manifesto-2024-large-print.pdf

conclude other trade agreements in the area and cannot guarantee the stability of its own regulations to 3rd countries.

- The EU would impose its rules on all UK imports locking the UK into trade with the EU - a high cost market.
- New economic areas, such as AI, gene modification, plant protection and animal breeding will suffer. Non-EU compliant policies such as the ban on the export of live animals may also have to go.[8] The UK has already licenced 15 products for UK agriculture that are not available in the EU, something that would have to change.[9]
- The UK would have little or no influence over its future food and agriculture regulation.
- The EU should under WTO rules allow mutual recognition. It is highly unusual for a state to agree to follow another jurisdiction's rules in order to trade.
- The amount of UK agricultural exports to the EU is very small and any regulatory costs eliminated or increased trade flows will necessarily also be very small.

The balance of Cost / benefit in UK-EU trade

The UK is the EU's largest export market for agricultural products and the UK. EU agriculture has a high-cost base compared to global competitors and the UK is one of the few large markets willing to pay for this high-cost model in terms of the price of its imports. The UK in return does not export agricultural products to the EU in large quantities and of those it does they are subject to little or no SPS regulation, notably beverages including whisky.



Source: Eurostat[10]

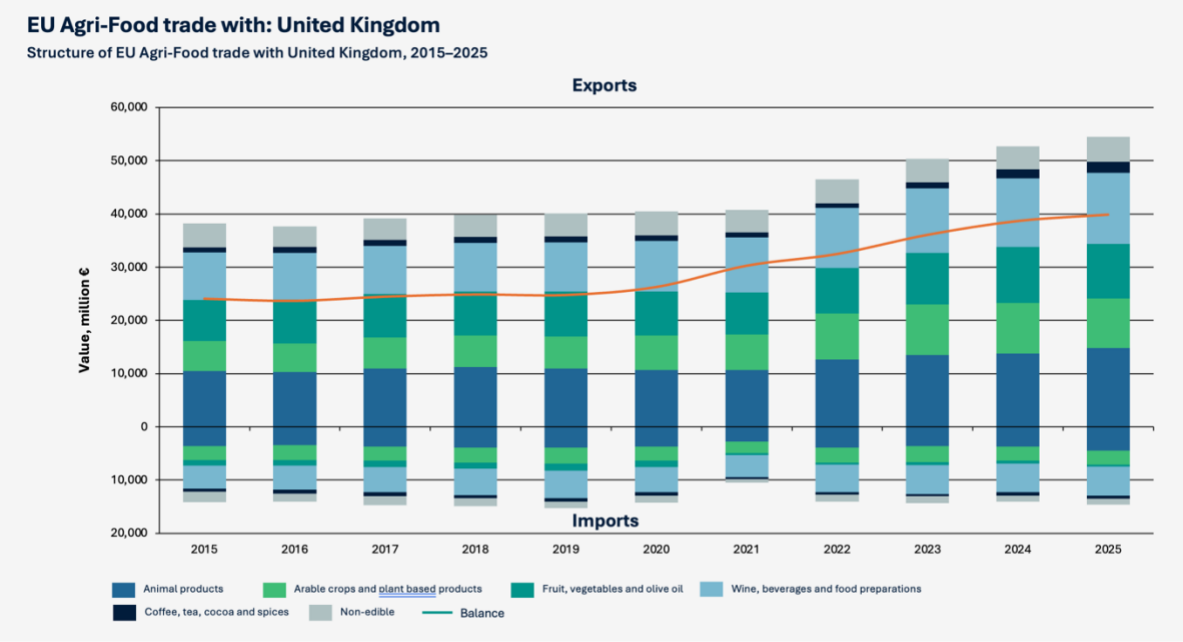
The UK's agricultural trade with the EU can be categorised as importing animal products, fruit, vegetables and wine and exporting in return far smaller quantities of beverages, often spirits.

8 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1054643/benefits-of-brexit.pdf

9 https://uk-safety.news/uk-approves-15-new-pesticides-amid-post-brexit-regulatory-shift/?utm_source=linkedin&utm_medium=jetpack_social

10 https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20260512-2

EU exports to the UK are therefore highly dependent on the UK's regulatory environment and whether it is able to import goods that are cheaper than those produced in the EU from other markets.



Source: Eurostat and Directorate-General for Agriculture and Rural Development [11]

A key economic EU aim of the reset would therefore be to tie the UK into the EU's regulatory environment to allow the free flow of EU goods into the UK, while simultaneously making it difficult for the UK to sign trade agreements that would allow in lower cost food imports from different regulatory regimes. I.e Canada, Brazil, the USA and Australia.

The 'EU reset' therefore prioritises the EU's exclusive access to the UK's market for agricultural products. This will be done in two main ways. Firstly, requiring the UK to follow the EU's laws on food safety and agriculture on its domestic agricultural and food industry so that the UK keeps the same EU high-cost model, EU goods can then flow uninterrupted. Secondly, the EU wishes to impose its own protectionist border around the UK to ensure that it cannot import goods from the rest of the world, even though the WTO would guarantee access for goods made to the same quality. The EU therefore gains an advantage in the UK market to other states wishing to export equally high standard products but under a different legal regime.

In short, the EU seeks to gain the UK market as a captive market where they set the rules and can keep out competition from cheaper producers.[12]

The UK is by contrast a small agricultural exporter with no resources to increase production and will have no influence over laws that will affect it. UK production of agri-foods falls far short of domestic demand. So, the UK can only increase exports or reduce imports if it can increase the productivity of

[11] https://agriculture.ec.europa.eu/system/files/2023-05/agrifood-united-kingdom_en.pdf https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20260512-2

[12] https://inews.co.uk/news/politics/items-big-shop-cost-more-brexit-reset-4307803?ito=twitter_share_article-top

its land and fisheries. Those new technologies in gene editing and plant protection that the UK could employ to increase domestic production would be under the control of the EU.

Reduced fees for EU Students & ERASMUS

The EU also has an interest in gaining English language education for their students, Far more EU students wish to study at British universities (both because they are more highly rated and to acquire proficiency in English language) than British students wishing to study in Europe. EU students had the right to do so on the same terms as UK students when the UK was in the EU. However, EU students are now charged the 'overseas rate' adding costs to EU students. The EU aims to regain reduced rates for their students, something that would mean the UK government subsidising or alternatively creating a funding gap for UK universities at an estimated cost of £400 million pa.

ERASMUS, the EU scheme to allow students to study abroad as a part of their studies will mostly benefit EU students and is replacing the successful Turing scheme which gave UK students the opportunity to do stints at universities across the world not just in Europe. Moreover, the UK payment for the Erasmus scheme is based on UK GDP not on the number of British students doing courses abroad and will amount to £570million in the first year rising to £870 million in subsequent years.[13]

Energy

The UK is a large importer of EU electricity (mostly from France) via a range of interconnectors and an exporter to Ireland. The continuance of a functioning electricity market is therefore a major EU economic interest. The TCA has an energy chapter that sought to make the trading of the import/export of electricity easier. In addition to this there are EU policies concerning the Carbon Border Adjustment Mechanism (CBAM) and the Emission Trading System (ETS), that may be subject to the 'reset', and their related 'level playing field' and ''non regression clauses that tie the UK into the EU's energy policy.

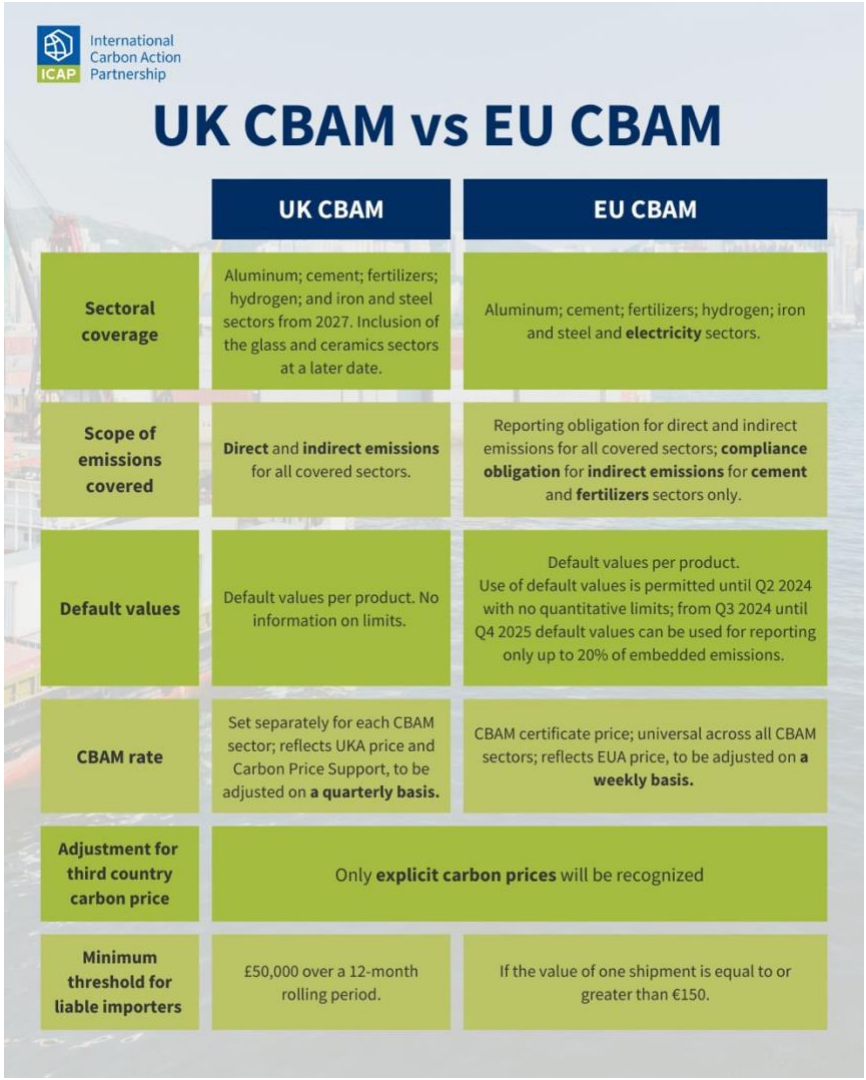
The Carbon Border Adjustment Mechanism (CBAM) an EU trade policy in all but name?

Perhaps one of the most significant elements of the 'EU reset' is the UK joining the EU's new CBAM. The CBAM is a tax on imported goods made in CO2 intensive industries. The logic being that the EU and UK have created high-cost bases for manufacturing through their decarbonisation policies and so now face severe competition from states that have cheaper energy.

The UK has already consulted on establishing its own CBAM and the EU has devised its own CBAM covering a different selection of goods. Northern Ireland would potentially come under the EU CBAM increasing the pressure on the Irish Sea Border and leveraging the UK into a deal where they might accept joining the EU CBAM under EU control and under EU law.

[13] https://www.russellgroup.ac.uk/policy/policy-briefings/uk-eu-negotiations-and-home-fee-status

This would be a major strategic victory for the EU as it would mean that any border costs in the UK would be decided by the EU and any EU trade agreements taking into account the CBAM would be negotiated by the EU on the UK's behalf, if indeed they include the UK at all.



Source: International Carbon Action Partnership[14]

The UK and EU CBAMs are currently different in detail and scope. Different sectors are covered, in particular electricity. The impact of the EU's CBAM on cross channel electricity trade is also unknown as the EU plans to impose a CBAM on electricity imports but the UK is not planning to place a CBAM on its own imports from France – would that mean that electricity generation in France would be unfairly benefited over that of the UK?

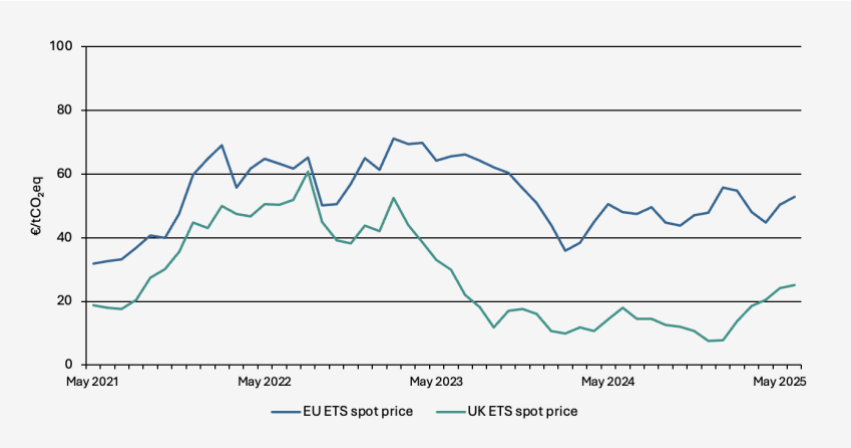
Arguably the EU's adoption of a CBAM, if the UK did not wish to pursue an identical one, could be contrary to the TCA as Article 392(6) of the TCA only calls on the EU and the UK to give "serious consideration to linking their carbon pricing systems", not impose trade barriers on each other under the guise of the climate protection.

[14] https://icapcarbonaction.com/en/news/uk-outlines-details-carbon-border-adjustment-mechanism-introduction-2027

The EU Emissions Trading System (ETS)

The UK has retained its own ETS from the time it was a member of the EU and the EU had its own separate system which covers different items and has a different price of carbon.

Price evolution (€) of EU and UK allowances



15

In addition to different costs the two schemes cover different sectors, the UK is not planning to expand to cover maritime, road and home heating energy emissions, whereas the EU has.

Article 392 of the TCA committed the UK to "maintain its system of carbon pricing insofar as it is an effective tool for each Party in the fight against climate change and shall in any event uphold the level of protection provided for by Article 391" (i.e non regression).

Getting the UK to join or mirror the EU scheme would be a win for the EU as it would remove the lower carbon price in the UK and allow for the UK to join their CBAM. The alternative of a UK with lower carbon costs outside their CBAM.[16] The EU's ETS system aims for a 62% reduction by 2030 compared to 2005 levels, well ahead of the UK's current position.

If as a condition of linking up the UK ETS with the EU ETS the EU decides to impose the EU Renewables Directive at least 42.5% of total energy consumption by 2030 must be renewable – in 2014 the UK produced only 16.8% of total energy consumed from renewables.[17]

Single Electricity Market

The EU is insisting that the UK sign up to the EU's Single Electricity Market supposedly to improve the efficiency of electricity trading – though this was not a UK objective. This would require the 'dynamic' application of EU laws in the UK.

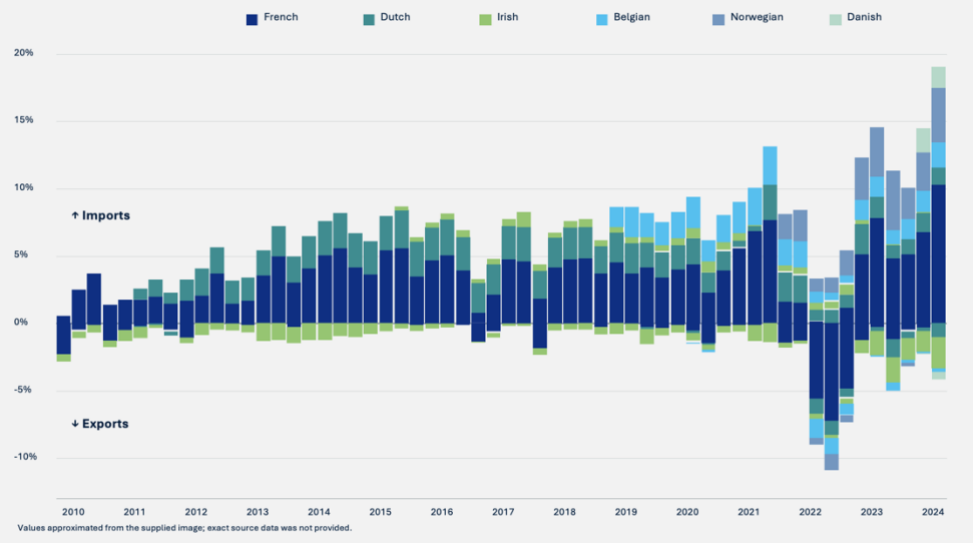
- Amending Directive EU/2024/1711 - includes the regulation of Grid Connections, Consumer Protections, Energy Sharing and Crisis Mechanisms.

[15] https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/775873/EPRS_BRI(2025)775873_EN.pdf
[16] Could the EU use 'environmental' clauses to impose it in NI and over the TCA?
[17] https://assets.publishing.service.gov.uk/media/6a6a27478319ab05f7caa1ce/DUKES_2026_Chapter_6.pdf

- Amending Regulation EU/2024/1747 includes the Agency for the Cooperation of Energy Regulators and commitments to "climate neutrality."

The EU aim is for its integrated electricity market to be over 60% renewables by 2030. The UK in a record year - 2025 - producing only 52.5% of the UK's electricity in 2025.[18] If the UK signs up to the EU's Single Electricity Market this would entail the 'dynamic' application of EU laws in the UK. The EU has stated its aims that the UK includes the whole "EU's internal electricity market, both the wholesale and retail market, and envisages dynamic alignment of UK laws to EU rules, to create a level playing field between the parties."[19] The EU aim for its energy markets is to reduce its net emissions by at least 55% by 2030.[20]

The regulation of electricity production and subsidy of renewables are a major factor in the cross border of trade in electricity and one that currently benefits France with a large fleet of nuclear power plants and less reliance on unreliable wind generation. For the UK's market relying on renewables the import of reliable French electricity comes at a cost. The UK has even paid the French to take UK electricity when the grid has overloaded.



Source: Electric Insights[21]

The aim of this legislation is to allow the further integration of renewables into cross border trading and storage of electricity. The EU's ambitions in the area include more activist integration of the EU electricity market including the coordination and direction of the national regulators.

The EU's negotiating position, based on the Renewables Directive, requires the UK to sign up to the target for 42.5% of all energy (not just electricity) to come from renewables as defined by the EU, by 2030. At present only 16.4% of UK energy comes from renewables. The EU gives no reason why an agreement on electricity (which accounts for less than a fifth of our energy usage) needs to set renewables targets for the other four fifths of energy use.

[18] https://grid.iamkate.com/ and https://assets.publishing.service.gov.uk/media/69cd13235cf899414a0bc616/Energy_Trends_March_2026.pdf
[19] https://www.consilium.europa.eu/en/press/press-releases/2026/03/30/eu-uk-relations-council-greenlights-talks-on-electricity-and-cohesion-deals-as-well-as-uk-s-participation-in-erasmusplus-for-2027/
[20] .https://climate.ec.europa.eu/areas-action/carbon-markets/about-eu-ets_en
[21] https://reports.electricinsights.co.uk/?p=2226

UK defence spending

The EU aim is to put the UK into its sphere for defence spending and its procurement rules. Ideally the EU would seek to use UK access to joint spending programs as a lever to align the UK with its defence objectives, i.e the defence of the European continent in Ukraine, but more importantly to divert UK defence spending away from collaborative projects with non EU states towards the EU industrial base.

So far, we have seen the UK commit to an EU loan program for Ukraine where the UK has agreed to pay the interest in proportion to the amount of equipment Ukraine buys in the UK. By doing so the UK may have to align with EU policy on reparations and Russian asset confiscations that are envisaged to pay back the loan's capital. Details of this loan have not yet been made public.

A bigger fund is Security Action for Europe (SAFE) fund, that the UK has so far remained out of due to the high cost imposed by, notably France, for participation. It is possible that the agreement on the Ukraine loan may now be used as a 'template' for other spending and borrowing in the area.

Made in Europe

The EU has already managed to get the UK to negotiate its external tariffs in order to join an EU procurement scheme that directly discriminates against the UK, when the UK does not discriminate in return.[22]

[22] https://www.reuters.com/world/uk/britain-eu-finding-way-through-made-europe-concerns-uk-minister-says-2026-10-27/

What is missing from the 'EU reset'?

Potential UK interests missing from the negotiations

Beyond correcting the problems that have arisen in past negotiations, (and the potential problems that might be created by the current 'reset'), there are some potential UK negotiating aims that have never been pursued.

UK has not tried to solve issues of political salience such as

The current talks conducted under the five year TCA review clause does not seek to revisit many of the potential UK interests that could 'improve' the TCA from a UK point of view. Some were even mentioned in the Labour Party's 2024 manifesto but are so far absent from the talks including commitments to "help our touring artists; and secure a mutual recognition agreement for professional qualifications to help open up markets for UK service exporters..."

Pet passports

One issue with limited political salience among UK voters is that of the removal of the EU pet passport. This particularly affects Northern Ireland where requirements for bringing pets into the province from mainland UK were applied for the first time. This was despite the EU allowing them for existing EU resident citizens returning to the EU. While the UK is rabies free there is little reason for the EU to block a reciprocal deal that does not require full Animal Health certification.

Passport queues in airports

A constant complaint of those who did not wish to leave the EU is that of having to enter the EU through the non- EU passport queue and to fill in the EU's entry exit procedures based around a limit of 90 days residence in any 180 day period in the EU's Schengen zone (including the British territory of Gibraltar). The UK by contrast allows EU citizens to stay up for up to six months on any visit with no annual limit. Changing the passport entry requirements and the 90 day limit were not a UK priority in the EU reset talks. A potential solution could relax the 90 day limit while keeping the requirement for work permits and/or proof of funds for longer stays.

Small packages for small businesses

The EU on 1st July 2026, removed the long-standing €150 duty-free threshold for small packages traveling into the EU. Now, every parcel entering the EU, regardless of value, will now be subject to customs duty. This move in response to a surge in packages from China has hit cross channel small business trade and relaxation could have been a negotiating aim of British negotiators.

Touring musicians

Much has been made of the difficulty UK musicians find when touring the EU, in terms of customs/cabotage and visas while EU musicians entering the UK have no such problems. In the face of EU resistance, the UK never seriously attempted resolving this issue or made it a major negotiation aim for fear it would be traded off against more important EU interests.

Professional qualifications

The UK as a services exporter could benefit from the mutual recognition of professional qualifications. Although not a major interest, it was included in the Labour manifesto but has so far, with the exception of limited progress for architects, remained absent from the current talks.

Liberal cumulation rules for domestic content

Likewise, the UK failed to ask for or gain liberal cumulation rules – the rules determining domestic content for free trade purposes - the EU as a larger market will always find it easier to produce items with sufficient EU components to qualify under its trade agreements while the UK can struggle.

For instance, for cars, the TCA currently requires 45% UK or EU content to trade tariff free, something that is due to rise in January 2027.

TCA requirements for content originating in the EU/UK

	1 May 2021 to 31 December 2023	1 January 2024 to 31 December 2026	From 1 January 2027
Vehicle value	**40%**	**45%**	**55%**
Battery pack	**30%**	**60%**	**70%**
Battery cell	**30%**	**50%**	**65%**

Data source EU-UK-TCA [23]

The Society of Motor Manufacturers and Traders has highlighted these rules as increasingly difficult to meet as "As the UK does not have the ability to source critical raw materials domestically, such as Cathode Active Materials…" [24]

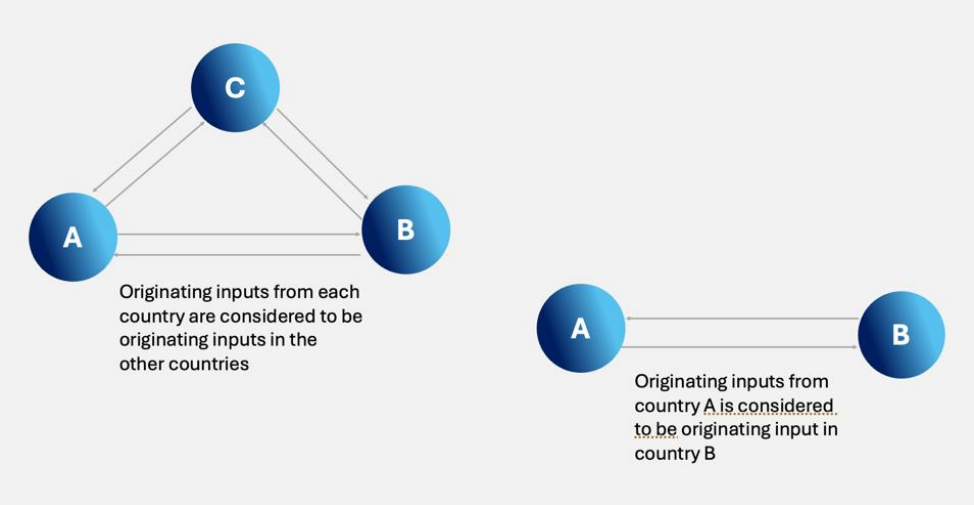
This UK weakness was recognised by the EU in the TCA negotiations where they decided to time limit an exemption on domestic content on batteries for automobiles to create a negotiating lever to help in future (2025) fisheries negotiations.[25]

[23] https://www.europarl.europa.eu/RegData/etudes/ATAG/2024/757643/EPRS_ATA(2024)757643_EN.pdf
[24] https://www.smmt.co.uk/wp-content/uploads/2025/06/SMMT-UK-Small-Volume-Manufacturers-Report-2025-FINAL-001.pdf
[25] Ironically the EU itself failed to produce enough batteries and so also required agreement.

While the EU does allow components made in the EU to count towards UK content (something that benefits EU companies) they have not allowed the UK to count components from EU trading partners, that can export to the EU tariff free to likewise count towards domestic content in EU exports to the EU – the so-called diagonal cumulation. Rules on components sourced from EU trading partners would help the UK but never formed a part of the trade negotiations.

Types of cumulation agreement:

Bilateral, diagonal cumulation for components:



Images by Samuel Lowe

Mutual recognition over harmonisation/alignment

The UK could also seek to negotiate the mutual recognition of UK standards, be they for pharmaceuticals, manufactured goods or food products. However, the EU is unlikely to reopen a chapter that was successfully settled in their favour in the original negotiations.

Financial services

While the EU's interests regarding the UK revolve around agricultural and other manufactured products, the UK is a large financial services exporter. Despite an early attempt at getting the EU to agree to equivalence in financial services regulation (as agreed with other 3rd states) the UK has never seriously sought to gain concessions on financial services in the trade talks, leaving financial services to trade on World Trade Organisation (WTO) terms – something that has not held it back.

Although the City was broadly opposed to Brexit and there were forecasts that it would result in 85,000 City jobs going over to the Continent, this didn't happen and regulatory divergence has proved valuable so its attitude has since reversed. Indeed, City UK successfully lobbied the Starmer government to exclude Financial Sector from the proposed reset.

Illegal migration

A question of huge political salience in the UK, to which no satisfactory answer has come from France or the EU so far is that of EU to UK illegal migration. The problem of illegal migration to the UK predates Brexit and was not affected by it. While the EU was keen on sharing the burden of migration

around Schengen and the UK, increasing the migration pressure on the UK26, the Dublin III Regulation on the return of illegal migrants is cited by some making a case for re-joining the EU made no difference.

Dublin III regulation transfers EU UK 2015–2018

- **Incoming to UK: 7,365 requests made to transfer people into the UK, resulting in 2,365 actual transfers.**
- **Outgoing to EU: 18,953 requests made by the UK to transfer people out to other Member States, resulting in 1,395 actual transfers.**[27]

There is no reason why the UK should not aim to get this issue resolved in any re negotiation although there is also little reason to expect the EU to help the UK as a former member when it didn't while it was a member.

Certification bodies

In order to sell goods to EU standards a UK firm needs to get 'type approval' with a certified certification body. Before the UK left the EU there were many of these in the UK, but despite allowing other countries to have bodies that could certify goods to EU standards the EU refused to allow the certification of UK certification bodies. Ideally the EU and UK would agree a Mutual Recognition Agreement on the acceptance of each other's product testing, inspection, and certification results. The EU has such mutual recognition agreements with the US, Israel, Canada, Japan, New Zealand and Switzerland but has so far refused one with the UK.

EU interests driving the 'EU reset' talks.

To understand the 'reset' negotiations it is important to understand the EU's own interests. For the EU the UK is a very valuable export market and security partner in addition to being a prized fishing ground and destination for its workers and students. While the UK was a member of the EU it was also a major contributor to the EU budget and amplified the EU's diplomatic and economic weight on the world stage. That is no more but the EU has a range of legal mechanisms to protect its rights in the UK.

What are the EU's interests in a relationship with the UK?

- **Sovereignty**. Or as they put it - preserving the EU's legal order
- **Economic.** Preserving the UK as a privileged market for EU agricultural and manufactured goods
- **Political.** To demonstrate that leaving the EU is not a viable strategy for other states
- **Defence.** Ensure UK cooperation in EU defence
- **Finance.** Ensure the UK contributes both to individual EU programs and, massively, to the central budget

[26] See for instance the pressure on David Cameron by Angela Merkel and others to accept 320,000 Syrians.
[27] https://commonslibrary.parliament.uk/research-briefings/cbp-11583/

The question is, how could even this agreement be improved upon to include the UK interests detailed above? And if it can, why were those improvements not included in the TCA itself? In theory any such potential improvements may not have originally been included for three reasons:

- **Failure of UK negotiating approach?** Labour rhetoric implies that UK negotiators under May and Johnson were too aggressive to secure concessions which the EU would concede to a more friendly administration - sometimes called the 'EU whisperer' approach. Or they were too stupid to ask for things they could have achieved. Or some alleged "Brexit doctrine" meant they deliberately did not seek what could have been achieved due to a desire to retain UK autonomy.
- **The EU may have withheld them deliberately?** The EU logic being it was essential to demonstrate that there are costs to a member state which leaves.
- **Leaving the Customs Union and/or the Single market automatically introduces obstacles?** The argument being these could only be removed by rejoining the Customs Union or Single Market.

While the history of the post Brexit negotiations was not one that shows the UK state in a good light there were circumstances at that time that made agreement difficult. The EU did need to demonstrate to its other member states that the Single Market was worth the associated costs and therefore needed to demonstrate costs were involved in leaving. The UK approach, based on a continuity of its approach during membership, trying to gain credit via upfront concessions – the EU whisperer approach - , failed yet lessons have not yet been learnt. The UK had a weak hand for domestic political reasons and the acceptance of the EU treaty structures and 'sequencing'. This meant the UK was fearful of asking for any of its own interests knowing it would need to be traded for something more valuable and set the UK up for the inevitable complaints when the item was not delivered.

Balance of Economic interests

Although the EU is the UK's largest export market the EU's trade surplus in goods with the UK amounted to €186.8 billion in 2025 making it their second largest trading partner after the USA.[28] This UK goods deficit is matched by a smaller services deficit if all services, including tourism, are included although the UK does run a trade surplus in financial services with the EU.[29] That is why the EU, to the surprise of pessimists, agreed to the most comprehensive free trade agreement with the UK that it has with any third party. Above all, they agreed to tariff free, quota free trade which is more valuable to them in absolute terms given their surplus in goods trade but proportionately more important to the UK given the share of our exports going to the EU. This mutual trade is beneficial even if it is more beneficial to the EU. The question for a renegotiation is what type of an agreement, if any, this trade requires.

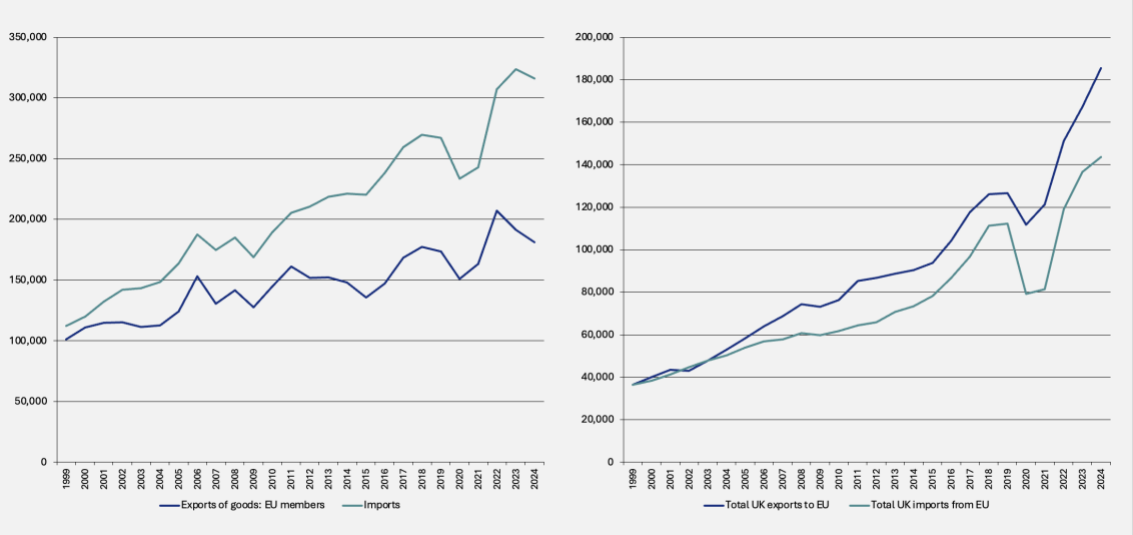
The UK's relative export weakness is mirrored in its trade with non-EU states. Its trade with the EU has therefore not been held back by the trading framework but more structural issues regarding the UK economy and the production of exportable goods – simply we do not produce goods that the EU wishes to buy in quantities that make up for the UK's structural dependence on imported EU goods, predominantly food. Improving the UK's ability to create exportable goods will involve getting

[28] https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20260622-1
[29] https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/united-kingdom_en

domestic policies such as energy and skills delivering for UK industry - the trading framework is a secondary consideration.

UK Imports and exports of goods to the EU (£millions)

Goods **Services**



Source: ONS

While the current TCA has not materially hindered the volumes of UK exports to the EU, it is also clear that services trade – which are not covered by the agreement – have fared far better. The reasons for the UK's poor record on goods exports is a wider story than the TCA as exports to other states have also been subdued. Some of the more valuable elements of the UK's exports, services, aerospace and Oil and Gas, there is no need for a trade deal at all.

Of these goods exports the greatest potential for expansion will remain high end manufacturing and not agricultural produce where due to geography (and competition for land by solar energy and housing) and demographics the UK has a structural import requirement and an inability to expand production.

Conclusion: The Reset – does it add up?

The British Government has not pursued its potentially important political issues and has allowed the EU to frame the 'reset' around its priorities.

	UK interest	EU interest	UK/EU concession up front?	Part of negotiations?
Liberal cumulation rules	Yes	No	No	No
Touring musicians	Yes	No (already conceded by UK)	No	No
Illegal migration Dover-Calais	Yes	No	No	No

Ease of UK passport holders entering the EU	Yes	No	No	No
Financial services	Yes	No	No	No
Fishing renegotiation	Yes	No	Yes	No
NIP	Yes	No	No	No
EU SPS rules in UK	No	Yes	UK agreement in principle	Yes
CBAM	No (sovereignty infringement)	Yes	UK agreement in principle	Yes
Energy rules	Not core	Yes	No	Yes
Youth Mobility Schemes	No	Yes	Yes	Yes
Reduced tuition fees for EU students	No	Yes	No	Yes
UK paying into EU defence funds	Depends on terms	Depends on terms	No	Yes
Gibraltar	Debatable. Not in terms of sovereignty	Yes	Yes	Yes

The rhetoric

The reset has from the beginning been somewhat rhetorical. There is a lot of language about 'closer to Europe' and 'resetting' or 'improving' a relationship from the UK government that has not been matched by actual practical policy proposals or the identification of and furtherance of British interests.

The UK Government has claimed that there is an economic interest in increased UK agricultural exports ignoring the fundamentals of a UK industry that is incapable of supplying the UK domestic market and is under pressure from competition for land and from imports.

The reality – unilateral concessions, nothing of value in return

The actual negotiations have so far included up front unilateral concessions by the UK on:

- Fishing resources,
- Unilateral alignment with EU laws
- Youth mobility concession
- Entanglement with EU Defence policy
- Unilateral alignment with the EU's CBAM and ETS
- Gibraltar specifically British passport holders being treated as 3rd party nationals.

What the UK should aim for in a renegotiation?

A future UK government will inherit a range of issues that require renegotiation. The existing problems with the WA and TCA added to the new problems arising out of the 'EU reset' opposed by both the Conservative and Reform UK parties.

The UK should approach the EU relationship with some clear principles as follows.

Sovereignty

The UK voted to leave the EU in large part in order to make its own laws. A sovereign Britain is one where Parliament can make and change laws unbeholden to the EU's legislative processes and courts. The UK is currently not sovereign in a range of areas and the trend to accepting EU laws in preference to UK ones seems set to continue. More importantly the UK should retain sovereignty in areas of future industrial development. The UK currently has its own gene editing regulations distinct from the EU and should develop its own AI regulatory framework. The UK should also control its own natural resources, including its fishing waters and energy production.

Most seriously in Northern Ireland the UK accepts 'dynamic alignment' where the EU makes and amends laws in over 300 areas without the need for UK permission. If the UK does not follow these laws the EU can take action itself and ultimately use its own Courts to impose sanctions.

The current 'EU reset' seems likely to expand 'EU sovereignty' over the UK's legislative process into the whole area of food regulation (threatening the UK's new gene editing industry) and potentially energy.

Economic

The UK does benefit from the TCA, as the most advanced trade agreement the EU has with any of its trading partners. UK companies have tariff free access to the EU single market while the UK preserves its independence from Single Market and Eurozone policies and does not pay money into the EU budget.

Political

The UK does have a political interest in cooperation with the EU and member states on a range of issues. Crime and policing cooperation is long running and important and works at both member state level and through new EU agencies. The UK also has a political interest in cooperation that leads to the reduction in illegal migration – although that has net been forthcoming from the EU and France so far.

The UK has an interest in defence cooperation with the EU as long as it allows for the retention of the UK's freedom of action. In practice this cooperation does not require the EU, although the EU appears keen to move into areas such as procurement of equipment and foreign policy priorities such as Ukraine.

Cultural

Britain is a leading European culture and has interests in cultural interchange with the EU. The free flow of people for visits and holidays is a UK and presumably a mutual interest, yet the EU has not prioritised the free flow of UK passport holders through airports. The free flow of culture in the form of musicians, orchestras and performances would presumably be a UK interest that was not secured in the original talks.

There are therefore a range of UK interests (both large and small) that the UK would seek to achieve in any negotiation that started from the beginning. Many are largely covered by the TCA, some small UK interests were not covered but do not appear to be the subject of the EU reset talks, which appear to be based around the EU's strategic interests regarding the UK.

While the UK has some outstanding interests that could be secured, the existing agreements do contain many deficiencies from an economic and sovereignty background that require addressing.

Preparing to succeed in a renegotiation

A future British Government set on regaining full sovereignty would need to invest political capital and spend time on preparatory works before and after entering government. Firstly, there is a domestic element. In 2016 a divided political class made negotiations with the EU far more difficult than necessary. Secondly, there are actions and proposals that could be made to aid agreement with the EU, notably on Northern Ireland.

Renegotiation essentials

1. **Have a clear manifesto mandate to reform the agreements**

   A government determined to renegotiate or act unilaterally will need to legislate and negotiate as a united front. This will require a Commons majority and a strong manifesto commitment that MPs, the EU and indeed the House of Lords will respect. This will need to cover legislating to remove the NIP, leaving the ECHR and taking back control of the UK's fishing resources as well as removing any alignment brought in via the 'EU reset'.

2. **Have clear alternatives for domestic interest groups.**

   The EU in 2016 was aided by the existence of clear pro EU interest groups. Science funding routed via the EU, regional funding routed to local government and universities that had become used to EU research and student funding as well as the ERASMUS student exchanges. A Government determined to renegotiate with the EU would be wise to have alternatives in place so as not to be held hostage. The Turing scheme for student exchanges, a UK research and science fund to replace Horizon, alternative suppliers for agricultural and other key imports.

3. **Create a credible threat of hazard for the EU.**

   A determined government should be prepared to do what we didn't do in 2016-2020 and have options to retaliate directly against EU interests. Work should be put into identifying politically sensitive EU exports, for instance wine and luxury exports in key EU member states and constituencies. By doing this work the UK would be taken more seriously placing tariffs on EU exports if the EU threatens to cancel the TCA. The UK should also prepare for the reimposition of SPS border checks on imported EU agricultural products, if agreement on mutual recognition is not found.

4. **Being constructive: Proposing a solution to the Northern Irish Border.**

   The NIP, or an open border in Northern Ireland will be a key interest for the EU in any talks. The UK should recognise this and aim to be pragmatic. The UK should propose alternatives to the existing protocol that keep the border open and acknowledges the Republic of Ireland's stated concerns.

Mutual Enforcement (ME)

One of the ways the UK could guarantee an open border in Northern Ireland while maintaining both the UK and EU legal structures is through the policy of 'Mutual Enforcement'.

This policy reverses responsibility for ensuring the integrity of the EU Single Market by the UK accepting responsibility for controlling exports from the UK into the EU rather than the EU checking imports. It is 'mutual' as in return for the UK protecting the EU's external border the EU would in return block non-UK compliant goods from entering the UK via the Northern Irish border.

The UK would therefore legislate to make it an offence to export non-EU compliant goods to the South. Ideally, the EU in return would make sure that no non-UK compliant goods move North. In practice as the UK accepts most EU goods and the volume of traffic across the border is small and predictable it would not matter if the Republic did not reciprocate. Any controls and checks on exports would be carried out at the point of despatch or delivery rather than at the border.

There are good reasons to believe that the EU could agree such an outcome.

- **It prevents non compliant goods entering the EU** in concept and practice as well or better than strict border controls.
- **It preserves an open border in Northern Ireland.**
- **It has a pedigree in EU**. Prior to the advent of EU harmonisation cross border trade was conducted on the principle of mutual recognition of each states' rules. To aid this Council Regulation (EEC) No 1468/81 of 19 May 1981 created an obligation of mutual assistance between the Member States to ensure the correct application of the law on the border. This included the exchange of information, assistance on request, and help detect and prevent infringements.[30]

Given that 'mutual enforcement was originally an EU concept it is not surprising that it was a senior EU official Sir Jonathan Faull who first raised the potential of ME in the context of Northern Ireland arguing "This proposal, which includes features which have never been discussed, will guarantee the integrity and autonomy of the EU's and UK's respective customs and regulatory territories, and will require neither a Customs Union between the two unless that is the wish of both, nor a hard border between Northern Ireland and the Republic".[31]

The UK could even pursue ME unilaterally, while negotiating to demonstrate good faith. Thus making ME more akin to unilateral enforcement.

[30] https://eur-lex.europa.eu/eli/reg/1981/1468/oj/eng
[31] https://verfassungsblog.de/an-offer-the-eu-and-uk-cannot-refuse/

How a renegotiation might work: Levels of negotiating difficulty:

An incoming centre-right government will have a range of priorities and depending on the make-up of the government, be it a coalition or a Conservative or Reform UK Government, renegotiating the treaties and 'reset' may differ in terms of ambition and time scale.

There are potentially three areas of UK-EU cooperation set out in the various agreements presenting differing levels of complexity.

Tier 1 – potentially negotiable without a major friction

There are areas of policy that the UK could leave with minimal conflict. Agencies where UK participation is governed by separate discrete agreements, areas that require periodic renewal (where the UK could either not renew cooperation or negotiate quicker exit) or where there is a legal right to exit within the treaties. These areas could form part of a minor renegotiation and may include large areas of the EU reset.

- **Youth mobility Scheme**, if agreed in the EU reset it could be a standalone or time limited agreement. However, it is possible the UK may agree to it being linked to another policy area, for instance alignment on SPS (food) regulations.
- **Erasmus university exchange scheme**, subject to any compensation scheme.
- **Fishing concession**, if the government does not renew it in 2038 it will end.
- **SPS alignment with EU law**, potentially might have a separate exit clause, or be linked to ERASMUS and Youth mobility in a package (but they may/will demand compensation via clauses in text)

Tier 2 – areas that would require political capital

There are areas where the UK could seek to leave the UK-EU treaties which would present more of a challenge and come with consequences.

- If the UK sought to **leave the fishing agreement** earlier than scheduled the EU might threaten to retaliate by triggering other areas of cooperation or seek compensation.
- If the UK left **the ECHR** the EU might raise questions regarding Northern Ireland (regardless of whether the UK planned to leave the Northern Ireland Protocol) with the support of the Irish government.
- If the UK decided to leave the **Carbon Border Adjustment Mechanism** (CBAM) – it could trigger compensation 'rebalancing' clauses.

Tier 3 – areas that would present the biggest challenges

- **The Northern ireland Protocol / Windsor Framework** is embedded in the Withdrawal Agreement which has no formal exit clause. That and the likelihood of the Irish government lobbying member states makes the Irish Sea Border one of the more difficult challenges to renegotiate or remove.
- **EU Citizens Rights**. The EU would feel obliged to push back on any UK attempts to reduce the rights afforded to EU Citizens with settled status in the UK.

EU legalism: How the EU could use the treaties to hinder renegotiation

The rebalancing and exit clauses in the UK-EU treaties:

Hindering renegotiation and a more durable UK-EU relationship is the EU legal service. The UK–EU relationship is governed primarily by two treaties: the Withdrawal Agreement (WA, including the Protocol on Ireland/Northern Ireland, now rebadged as the Windsor Framework) and the Trade and Cooperation Agreement (TCA). Both contain exit, rebalancing, safeguard, and enforcement ("punishment") mechanisms that either side could engage. These could be brought into play in the context of any significant renegotiation or divergence.

It would be vital for the UK to raise the status of any talks above that of technical talks within the scope of these agreements to political talks to avoid the pitfalls designed by the EU legal service.

However, if the UK decides it should renegotiate within the framework of the existing treaties it will come up against a mesh of interrelated rebalancing or 'penalty' clauses and cross retaliation and litigation.

The Withdrawal Agreement

There is no general exit clause

There is no overall denunciation or exit provision which would allow either party to terminate the WA as a whole. This was insisted upon by the EU at the time of the UK's exit and acquiesced into by the then UK Government.

The WA therefore remains in force indefinitely unless the EU agrees to any changes. While in force it continues to be subject to the jurisdiction of the Court of Justice of the European Union.

Northern Ireland Protocol (NIP)

The NIP as a part of the WA has no exit clause at the disposal of the UK government. What it had, to provide a fig leaf of democratic legitimacy, is a majoritarian vote in the Northern Irish Assembly (Article 18) and a safeguards clause (Article 16).

- **Article 18 of the NIP**: Continued application of the majority of the NIP (Articles 5–10) is subject to periodic consent by a majority vote in the Northern Ireland Assembly. This process has been completed once. Given its composition it is highly unlikely the Assembly would fail to support the NIP's continuation despite unionist objections.
- **Article 16 of the NIP**: If application of the Protocol causes *"serious economic, societal or environmental difficulties that are liable to persist, or diversion of trade*," either party may unilaterally take appropriate safeguard measures. While there is ample evidence of trade diversion and difficulties regarding the economy and politics resulting from the imposition of EU law and the Irish Sea Border this article has not been used. If it were used it would however be difficult to build a permanent solution on it as any safeguarding measures must be strictly

limited in scope and duration to what is necessary and should least disturb the Protocol. In addition, the EU would be entitled to adopt proportionate rebalancing measures as set out in Annex 7.

- **Article 13 (8) of the NIP**: The EU may agree to a new agreement superseding part or all of the NIP. This is entirely at the EU's discretion.
- **(Article 13 (4)) of the NIP Remedial measures for new EU acts:** If the treaties' Joint Committee cannot agree to add a new EU act falling within the Protocol's scope (under dynamic alignment), the EU may (after notice) take appropriate remedial measures. These take effect no earlier than six months after the Union informs the UK. EU institutions, including the ECJ, retain direct enforcement powers over certain Protocol provisions (Article 12(4)).
- **Article 178 of the WA** (see below)
- **The Windsor Framework**, formally renamed the NIP but left it intact. The insertion of a **'Stormont brake'** on new EU legislation was designed to be inoperable (and subject to a Minister's veto). It has so far not been used successfully.

There is therefore no route within the WA for the UK to permanently disapply the NIP without the EU's approval and unilateral disapplication would leave the UK open to EU countermeasures and legal action.

Enforcement and Suspension Powers

Beyond the NIP the WA includes other measures that retain importance today, including on EU citizens' rights and residual commitments to finance. These are covered by a range of treaty articles that could be used to punish the UK if it tried to resile from the treaty including the NIP.

- **Article 178 temporary remedies for non-compliance**: This is the principal enforcement mechanism in the WA text. After consultations and an arbitration panel ruling of breach, the EU may, after notice, suspend obligations arising from any provision of the Agreement other than those on citizens' rights, **or parts of any other EU-UK agreement** (in this case the TCA). Suspension must be proportionate and temporary; it ends once compliance is restored. **Penalty payments may also be imposed**. Questions of EU-law interpretation are referred to the ECJ, whose ruling binds the arbitration panel.
- **Citizens' rights**: Part Two of the WA cannot be suspended. Individual residence rights may be refused, terminated, or withdrawn in cases of abuse or fraud (relevant provisions in the citizens' rights title), but this is limited to individual cases, not a treaty-level exit or opt-out.

The WA has no effective exit clause. Article 178 suspension powers could come into play if the UK unilaterally denounced part or all of the WA. This would include financial penalties proportionate to any UK breach.

Can the EU retaliate under the TCA if the UK breaks the WA

If for instance the UK unilaterally disapplied the NIP it would end up on the receiving end of an arbitration panel award under the WA. Depending on what level of damage the EU could show (arguably minimal if the UK provided alternatives), and if the UK refused to pay, **the EU could pursue its retaliation in measures under the TCA**. Under the TCA Article 749(4) if a party (i.e the UK) persists in not complying with a ruling of an arbitration panel established under an "earlier

agreement" (i.e. the Withdrawal Agreement) that could trigger the EU to suspend obligations under the provisions referred to in Article 735 which covers the bulk of the TCA's provisions.

Trade and Cooperation Agreement (TCA)

Exit and Termination Clauses

The TCA contains a range of termination clauses that the EU could operate if the UK sought to resile from parts of the agreement or otherwise from the WA.

- **Article 779 General termination**: Either party may terminate the entire TCA (and any supplementing agreement) by written **12 months' notice**. No reason needs to be given.
- **Article 772 fast termination:** The EU could terminate the TCA faster if it considers there has been a serious and substantial failure by the UK to fulfil any of the *"essential elements"* of the partnership, The essential elements set out in Article 771 are:
  - democracy, the rule of law and human rights
  - the fight against climate change
  - countering the proliferation of weapons of mass destruction

For this suspension to work the failure must be of a grave and exceptional nature (threatening peace and security or having international repercussions). Before acting, the Party must request that the Partnership Council meet immediately under Art 771. If no mutually agreeable solution is found within 30 days, termination or suspension measures may be taken.

Fisheries

- ***(Heading Five, Article 509)***: Termination of the fisheries heading automatically terminates Heading One (Trade), Heading Two (Aviation), and Heading Three (Road Transport), effective on the first day of the ninth month following notification.
- ***Article 501: Fisheries compensatory measures***: If the UK withdraws or reduces access to its waters, the EU *"may take compensatory measures commensurate to the economic and societal impact of the change in the level and conditions of access to waters"* including suspending access to its own waters and/or the preferential tariff treatment of fishery products.

Crime and Policing cooperation:

- **Nine months:** The EU may terminate the crime and policing chapter of the TCA on notice without a reason.
- **Immediate termination:** They can terminate it quicker if the reason for termination is that the UK has left the ECHR. They have a suspension power under Article 693 if they are concerned about the UK's handling of data.

Rebalancing and Safeguard Mechanisms

These allow unilateral measures when future policy divergence (not necessarily a treaty breach) produces material effects, or in response to serious difficulties.

- **Article 411: Level Playing Field rebalancing**: Either party may adopt **"appropriate rebalancing measures"** if significant divergences in labour/social standards, environmental or

climate protection, or subsidy control produce material impacts on trade or investment. Measures must be strictly necessary and proportionate; priority is given to those that least disturb the Agreement. Procedure involves notification via the Partnership Council and 14-days of consultations. The other party may apply proportionate countermeasures pending a tribunal ruling.

- **Article 773: Horizontal safeguards**: This article authorises unilateral safeguard measures if serious economic, societal, or environmental difficulties of a sectoral or regional nature (including relating to fishing activities) that are liable to persist arise. Measures must be limited in scope and duration. The other party may adopt proportionate rebalancing measures if an imbalance is created.
- **Other remedial tools**: Article 374 (remedial measures and suspension of obligations in certain contexts), Article 469 (heading-specific remedial measures), Article 34 (suspension of preferential tariff treatment for specific products), and Articles 448/457 (safeguards and suspension of acceptance obligations in specific regulatory or transport contexts).

Dispute Settlement and Review

- **Article 411(3)**: Includes an explicit right to countermeasures while an arbitration tribunal examines the legality of rebalancing measures.
- **General state-to-state dispute settlement (Part Six, Title I, Articles 734–762)**: After consultations and an arbitration panel finding of breach, the complaining party may suspend obligations. Cross-sector retaliation is expressly permitted across the economic partnership. There are provisions for "return retaliation" if the initial suspension is found inconsistent.

Summary

Area	Notice period	Consequences
Police and Crime Cooperation (Part Three)	9 months or faster if ECHR is the reason given	Suspension is also possible for serious and systemic deficiencies in fundamental rights or the rule of law.
Fisheries (Heading Five of Part Two)	9 months	Termination of the fisheries heading automatically ends the trade, aviation and road transport headings. The EU can then seek further compensation.
Trade (certain headings in Part Two) **Aviation / Road transport**	9 months (in some cases) Linked to fisheries	Specific rights exist to terminate trade-related titles (with exceptions for social security and short-stay visas).
The NIP	No notice period	EU can seek proportionate penalties and cross retaliate in the TCA
The ECHR	6 months' notice to the Council of Europe (not the EU)	Can be used as a cause for fast termination of the crime and policing chapter. It would cause a separate argument under the Belfast Agreement.

UK exit from the European Convention on Human Rights

The Withdrawal Agreement and parts of the Trade and Cooperation Agreement are based on the premise that the UK would remain a party to the ECHR. However, it is common ground between the Conservative and Reform UK parties that they would leave the ECHR once in power.

The TCA

While the EU (and UK) can terminate the whole TCA on notice for any reason they can individually terminate the chapters relating to crime and policing cooperation on nine months notice. However, under Article 692 if they decide to terminate the crime and policing chapters "on account of the United Kingdom or a Member State having denounced the European Convention on Human Rights or Protocols 1, 6 or 13 thereto, this Part shall cease to be in force as of the date that such denunciation becomes effective…"

The reason for this feature is - if the UK, having left the ECHR, began to erode the fundamental rights of, for example, suspects whose extradition the UK might seek, the EU could refuse to cooperate. Likewise, the UK can suspend cooperation on crime and policing measures if an EU member state introduces measures undermining the rights of suspects we might otherwise extradite. Therefore, there is no obligation for the EU to terminate the crime and policing aspects of the whole or part of the TCA, let alone the TCA as a whole

Therefore, there is no obligation for the EU to terminate the crime and policing aspects of the TCA, let alone the TCA as a whole, on account of the UK leaving the ECHR, however it could be a reason for doing so. Politically, at the time of the agreement the EU Council decided that they would terminate the TCA if the UK left the ECHR, but that does not bind future EU Councils.

Northern Ireland: The Belfast/Good Friday Agreement and The Northern Ireland Protocol

One of the areas of the acutest political sensitivity in the whole UK-EU relationship is Northern Ireland. When it comes to the Northern Ireland Protocol (and ECHR withdrawal) there is a common contention that leaving the NIP 'breaks' the Belfast Agreement (BA). This is based on a selective reading of the BA as well as the Withdrawal Agreement.

The BA was signed in 1997 and consisted of two documents, the British Irish Agreement (an international Treaty) and the multi-party agreement – which wasn't.
What does the BA say on the Northern Irish Border?

Firstly, the Belfast Agreement did not oblige the UK to remain in the EU. Of the part of the agreement that was an actual international agreement the preamble simply states only that *"Wishing to develop still further the unique relationship between their peoples and the close cooperation between their countries as friendly neighbours and as partners in the European Union."* There are no further references, it was a declaratory statement of the status quo, not a commitment to stay in the EU or keep any particular border formalities.

What does the BA say on UK ECHR membership?

The BA was agreed shortly after the Labour Party came to power when the UK had already begun the process of placing the ECHR into domestic law in the 1998 Human Rights Act. The BA contains a reference to the placing of the ECHR into domestic law in Northern Ireland (but not in the Republic which at the time had no plans to follow suit or indeed mainland GB).

While the ECHR has not been a major political issue in Northern Ireland there have been a number of historic cases at the ECHR prior to UK incorporation of the text involving the subjection of IRA suspects to "inhuman or degrading treatment or punishment" under Article 3 ECHR. This is not within the current discussion on the ECHR.[32] There is a concern that if Northern Ireland was left in the HRA domestically and GB was not it could become a magnet for immigration cases.

While the British Irish Agreement (the international treaty) does not mention the ECHR it does state that *"The two Governments affirm their solemn commitment to support, and where appropriate implement, the provisions of the Multi-Party Agreement"* and the Multi-Party Agreement in turn states *"The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency."*[33]

While this is a prima facie commitment in an international treaty, at one step removed, to retain the ECHR in domestic NI law (not necessarily Convention membership which involves accepting the jurisdiction of the Strasbourg Court), it can be noted that the BA has been amended on a number of occasions including unilaterally by the Republic of Ireland. It was itself a unilateral concession by a Labour Government already committed to such an action.

[32] See for instance Ireland v. the United Kingdom (1978),

[33] https://assets.publishing.service.gov.uk/media/619500728fa8f5037d67b678/The_Belfast_Agreement_An_Agreement_Reached_at_the_Multi-Party_Talks_on_Northern_Ireland.pdf

Danger of an escalatory spiral?

In a potential negotiation with the EU there remains a danger, if the EU legal department and Commission Officials remain in charge, for there to be a spiral of legal actions and reactions. While much of it may be reduced to arguments about money, there are issues that prove more resistant to early agreement. For instance:

UK action		Potential EU reaction	UK counter reaction
UK gives notice it is leaving the ECHR	⋙	EU asks for reassurance on protections for crime and policing cooperation.	UK guarantees data protection and the Human Rights of suspects and other guarantees in the HRA repeal Bill.
UK gives notice it will not renew and leaves various EU projects early, ERASMUS, Youth Mobility Scheme, Horizon and the CBAM/ETS and energy chapter.	⋙	The EU demands compensation under various compensation clauses and that the UK pays its bill up to date. The exit from the CBAM and any agreed external tariffs triggers the EU to remove the UK from their 'made in Europe' industrial scheme and places the UK outside the EU's own CBAM.	The UK argues the financial bill claimed by the EU is excessive and the EU threatens action in the ECJ. The UK litigates the CBAM and 'Made in Europe' under the TCA.
UK decides to leave fishing chapter early	⋙	EU places tariffs on UK sea food products and blocks shellfish exports entirely. The EU threatens to terminate chapters of the TCA and demands compensation.	The EU has an internal argument regarding the importance of fishing, with France Spain and the Netherlands arguing for suspending the TCA or at least imposing some level of additional tariffs, to which the UK responds.
UK states it intends to remove the NIP and the Irish Sea Border and negotiate alternatives if possible.	⋙	EU takes the UK to arbitration and threatens cross retaliation in the TCA including tariffs on selected UK goods.	UK introduces unilateral enforcement to meet EU concerns. UK takes the EU to the ECJ for violations of state aid via tax breaks in Ireland, demands compensation and questions the value to the UK of the Common Travel Area and providing a land bridge between Ireland and the EU. EU debates solidarity with Ireland versus negotiating a new border with the UK in Ireland.
UK states it will terminate the SPS agreement and dynamic alignment in food regulation while proposing alternatives.	⋙	EU demands compensation for the set up costs and reimposes border SPS controls on UK food and drink products.	The UK adds this demand to the list of others it is negotiating.

Should the UK seek negotiations or act unilaterally?

While it is preferable that the UK can agree to changes to the UK-EU treaties amicably. The UK and EU both benefit from a huge amount of bilateral trade, however, the EU benefits disproportionately. The UK and EU also have a shared interest in defence and security that they would not wish to derail. Despite that it is possible that the EU will refuse to negotiate and rely on its interpretation of the treaties. The question then arises as to whether the UK could or should change the dynamic of the negotiations by acting unilaterally outside of the wording of the treaty structure.

Can the UK leave the agreements 'legally' outside of EU law

The first thing to recognise is that there is no 'international court' with jurisdiction or enforcement powers if the UK departed from the wording of the treaty. What the UK needs to navigate is 'international law' which is a body of customary law and procedures governing the interaction of sovereign states, codified, in most part, in the Vienna Convention. In terms of the Withdrawal Agreement the EU inserted its own court the CJEU as the ultimate authority, but in terms of the treaty itself that is not an international Court. Domestically, the UK follows the doctrine of 'Parliamentary sovereignty', if the UK Parliament passes a law in contradiction to the WA or TCA, that will be the law.

For the UK to leave the treaties unilaterally it will need to satisfy not a Court but international opinion in terms of allies and trading partners in order to preserve its reputation as a state that obeys international norms. A closer look at the circumstances under which the treaties were signed does allow for persuasive legal cases that could be deployed in the court of international opinion.

- **The NIP was always intended to be temporary**. In terms of the original negotiation the EU discussed the creation of a new border on the UK's external border in Northern Ireland but over time ruled it out arguing the technology was not ready. It was originally agreed (in the December 2018 Joint Report) that the NIP would exist until 'alternative arrangements' were available. Technology has moved on in the interim making a high-tech unobtrusive border possible. In terms of internal EU law, it was held at the time that Article 50 could not be used for a permanent trade agreement – meaning the NIP would be vulnerable to a complaint within the EU.
- **The EU is not a sovereign state.** 'International law' in so far as it exists binds sovereign states. While the sovereign EU member states were signatories of the Withdrawal Agreement in practice it was an agreement between a sovereign state and an international organisation.
- **The UK was a departing member state not an equal.** The UK was a departing member of the EU and as such was in a legally weaker position, bound by the strictures of Article 50. There are parallels to the arguments made by the Mauritius Government in the ICJ's Chagos litigation where Mauritius claimed that as a British Overseas Territory Government it was not entirely free to agree a treaty with the British government on equal terms, invalidating the agreement in their eyes.

- **Vienna Convention.** Although there is no definitive answer on the interpretation of the Vienna Convention (and the EU would not accept one that allowed the UK to exit parts of the EU treaties) there are a number of arguments that could aid the UK's case in international opinion.
    - ***The UK could construct an exit clause under the Vienna Convention***. Under the Vienna Convention (Article 56), which codified customary international law, if a treaty did not have a specific exit clause then a party would be allowed to construct one. The Withdrawal Agreement has no exit clause. There is a procedure for the Northern Ireland Assembly to vote against the Protocol, but that is not a UK exit clause and is not even constructed in terms of the Northern Irish procedure of consent set out in the Belfast / Good Friday Agreement.[34]
    - ***The UK could argue that the treaty infringes its vital state functions.*** Under the Vienna Convention (Article 53) Treaties conflicting with a peremptory norm of general international law are invalid. Given the nature of the Withdrawal Agreement in terms of sovereignty and the international norms on colonisation, it is arguable that the treaty is invalid and could be dropped. Separately the UK could also argue that there has been 'a fundamental change of circumstances' since the signing of the treaty in terms of technology and developed relations.
    - ***Signed under duress.*** The UK under Article 50 of the Withdrawal Agreement was trapped in a process as a departing member that put it at a severe disadvantage of a two-year period, where the EU could pit its interests against the 'cliff edge' of leaving without an agreement.

  None of these arguments will go without a contest but as a part of an attempt to place the treaties in context as explain UK actions they could aid the process of resetting the UK-EU relationship.
- **Article 16 NIP:** Alternatively, with regards to Northern Ireland the UK could build on the terms of the agreement itself claiming to act under Article 16 (trade distortions) and remove the NIP unilaterally. In that case an Act of Parliament to overrule the treaty in UK law would suffice.

Alternatively, the UK could attempt to avoid a direct confrontation with the EU and follow a practice as old as the EU itself, quiet non-compliance. It was a common complaint of the UK, when it was a member that the UK objected to EU rules but once passed it obeyed them. Annual studies by the EU of compliance with EU laws bears this out. The UK could avoid confrontation directly but gradually and unofficially resile from parts of the existing agreements, for instance the Northern Ireland Protocol and potentially fishing without announcing an overall strategy. The upside to this is it would prevent a frontal confrontation and may force negotiations; however, it seems unlikely that the UK civil service and media would permit the UK to continue such a course. Additionally, the UK media would not be accustomed to non-compliance as a deliberate tactic and would report it as a failing of the Government.

[34] https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

UK playing hardball?

The UK could seek to up the stakes in a renegotiation and play 'hardball'. If that was the course of action decided upon the UK has a range of cards to play.

Firstly, Ireland. Ireland will be a major obstacle in terms of Northern Ireland. UK negotiators post 2016 accepted Ireland's special status as a negotiating partner and internalised many Irish government talking points. However, a different Government could be less reserved and play 'hardball'.

- **The Common Travel Area:** The UK and Ireland have a Common Travel Area that allows for mostly passport free travel within the two states as well as a Common Citizenship right and right to live and work in both states. This right is disproportionately useful to the Irish in terms of the right to work and travel and of less utility to the UK where it is often seen as an immigration backdoor to the UK. Although an unpopular move in much of Northern Ireland the UK could threaten to end or tighten up the arrangement unless there was progress on the NIP.
- **The land bridge:** The UK could decide to charge Irish lorries using the Dover to Holyhead route for cargo destined for Ireland. Irish hauliers using the UK roads for movements that do not benefit the UK could for instance incur a toll for road usage.

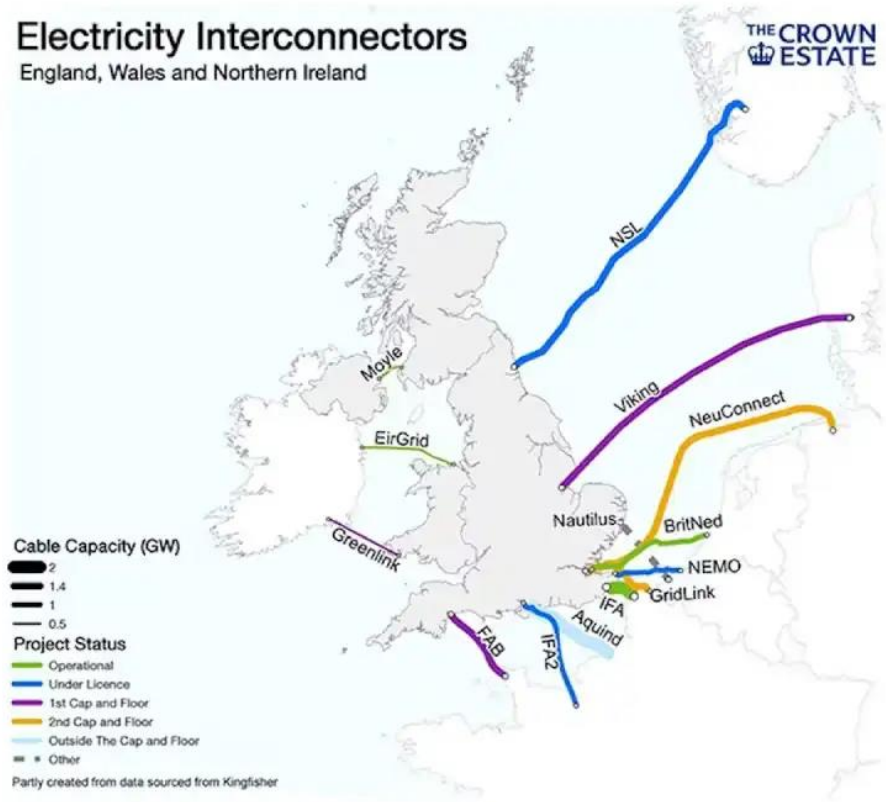
Secondly, the UK is a major contributor to EU defence and has never placed that cooperation into the mix of an EU UK negotiation. A new government might take a different view on EU defence and focus more on NATO commitments, Ukraine and global interests while not getting involved in EU defence and defence industrial cooperation.

Lastly, the balance of trade with the EU is firmly in the EU's favour. If the EU threatened to not cooperate on replacing the NIP or the UK's exit from CBAM / a fairer fishing deal the UK could accelerate its programme of foreign free trade agreements to replace as many of the EU exports to the UK as possible. This could potentially impact EU agriculture and particularly Irish agricultural exports. In extremis the UK could even make it known that they would themselves terminate the TCA and walk away in the knowledge that it now has multiple other trade agreements particularly with agricultural exporters who could replace the produce currently imported from the EU.

EU playing hardball?

Could the EU switch off the interconnectors?

While the UK could play 'hardball' the EU may also do the same. One potential arena being that of energy where France has previously threatened Jersey with the switching off of its interconnectors in a dispute overfishing. While this is highly unlikely and would itself break numerous agreements the UK should prepare for a renegotiation by reducing dependency on the EU. The UK should plan for that eventuality, self-sufficiency in energy being beneficial in any event.



Source: The Crown Estate

EU demanding damages

If the EU decided to oppose the UK's attempts to renegotiate or leave the NIP and fishing aspects of the UK-EU treaties they might go to arbitration or even their own court and award themselves damages. These could then be 'collected' via tariffs or potentially by attaching to UK assets. This would be a major escalation the UK would need to be prepared to counter both legally and in the same terms or asymmetrically. The UK would need its own domestic legislation to sanction EU or member state assets.

Other EU retaliation

In the Brexit negotiations the UK was threatened with a range of fantastical problems. The Irish government, when not talking about terrorism threatened to close Irish airspace to UK air travel. Whether anyone believed them is another story.

Identifying allies and interests

In order to minimise the chances of EU retaliation the UK should seek to identify allies within the EU as well as the states most likely to cause friction. From this it is clear that the EU may find it difficult to hold together an alliance opposed to the UK's demands when many have different interests and not all EU states will feel the need to support the EU on issues that affect only one or a small group of states.

What interests do the EU states and others have in the UK's renegotiation.

	Fishing	Agricultural exports	Northern Irish Border	Goods trade	Defence	Other
France	Priority	Priority				
Ireland		Priority	Priority			
Netherlands	Priority					
Poland					Priority	
Germany				Priority	Priority	
USA			Possibly			
Spain	Priority					Gibraltar

Global alternatives to EU partnership

Part of the preparation for a renegotiation with the EU would be to widen and deepen the UK's trading relationships outside of the EU. Diversification away from the EU Single Market has been happening for a number of years and as a result the % of UK trade outside of the EU has increased. The larger the % of the UK's trade is conducted outside of the EU the more strategic independence the UK will have in its EU dealings.

UK trade with EU and non-EU countries

Goods and services, excluding precious metals, £ billion, current prices, 2025

	EU £ billion	% of UK trade	Non-EU £ billion	% of UK trade	Total £ billion	% of UK trade
Exports	384	41.4%	543	58.6%	927	100.0%
Imports	472	50.0%	472	50.0%	944	100.0%
Balance	-88	..	71	..	-17	..

Source: Derived from ONS series FSL4, FSL5, FSL6, L854, L868, L86M, FSL7, FSL8, FSL9, L855, L869, L86N

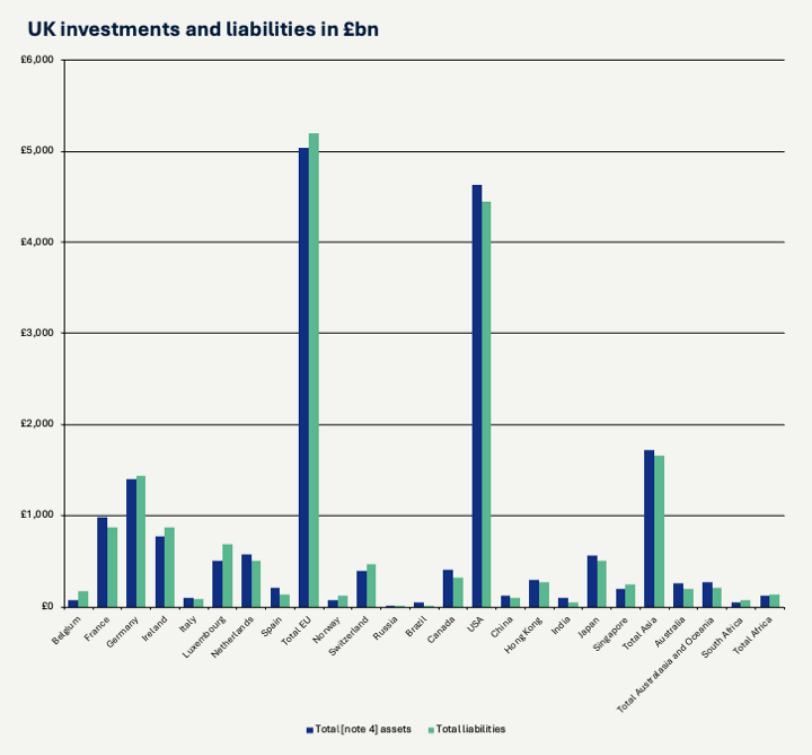
Source: House of Commons[35]

The UK has already diversified its trade in terms of imports of agricultural products from Australia and Canada, with the UK trade deals being noticeably more liberal than the EU predecessors.

The UK has also acceded to Comprehensive and Progressive Agreement for the Trans-Pacific (CPTPP) opening access to trade with fast growing states in the Pacific rim including Canada, Australia, Mexico, and Japan. The UK could build on these in the more political sphere to balance the political aspects of the EU. The most obvious example of this would be in CANZUK. The grouping of Commonwealth states most closely aligned to Britain.

A look at where the UK invests in the world shows that the UK has a wide range of global interests.

[35] https://researchbriefings.files.parliament.uk/documents/CBP-7851/CBP-7851.pdf



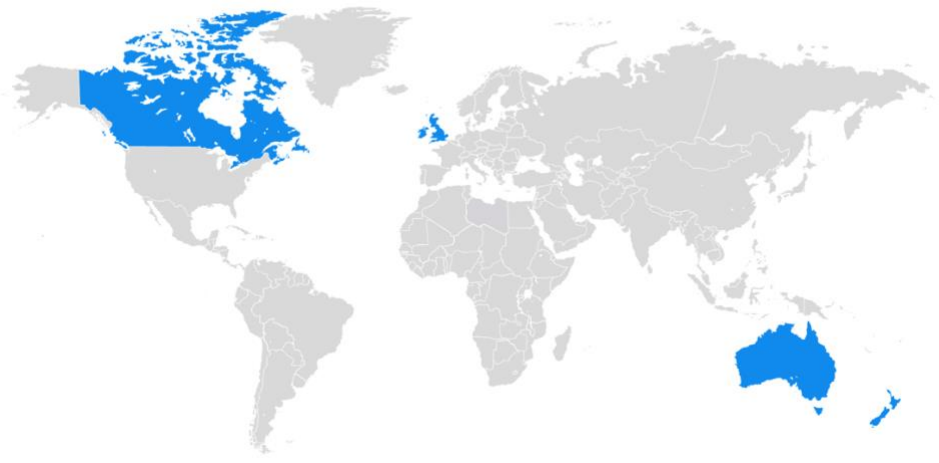
Source: ONS Pink Book 2025

The UK could seek alternative groupings of like-minded states. There are already trading groups aimed at free trade such as the Cairns group of free trading states. In addition to these there are politically aligned groupings the UK could play a significant role with.

CANZUK

An alternative grouping to the EU which is starting to gain traction in all four states is the Canada, Australia, New Zealand UK grouping.

Together these countries which share a head of state and common law and institutions could be a significant geopolitical grouping with influence in all main continents where all four parts complement each other maximising their influence.



AUKUS

Primarily a defence pact but overlapped with the new UK Australia free trade agreement and the CTPTT the deal anchors the UK as a significant ally of both Australia and the USA and is potentially something that could be built on, adding a select group of other western defence allies, foremost among them Canada.

AFRICA & CARICOM

From an investment, historical and resource viewpoint Africa is a continent where the UK has significantly underperformed in recent years allowing competitors such as China and Russia to gain influence and economic opportunities that the UK should have been able to acquire. The UK has a good record on granting preferential WTO trading terms to less developed states and direct aid that should bolster the UK's influence if the UK maximised its influence.

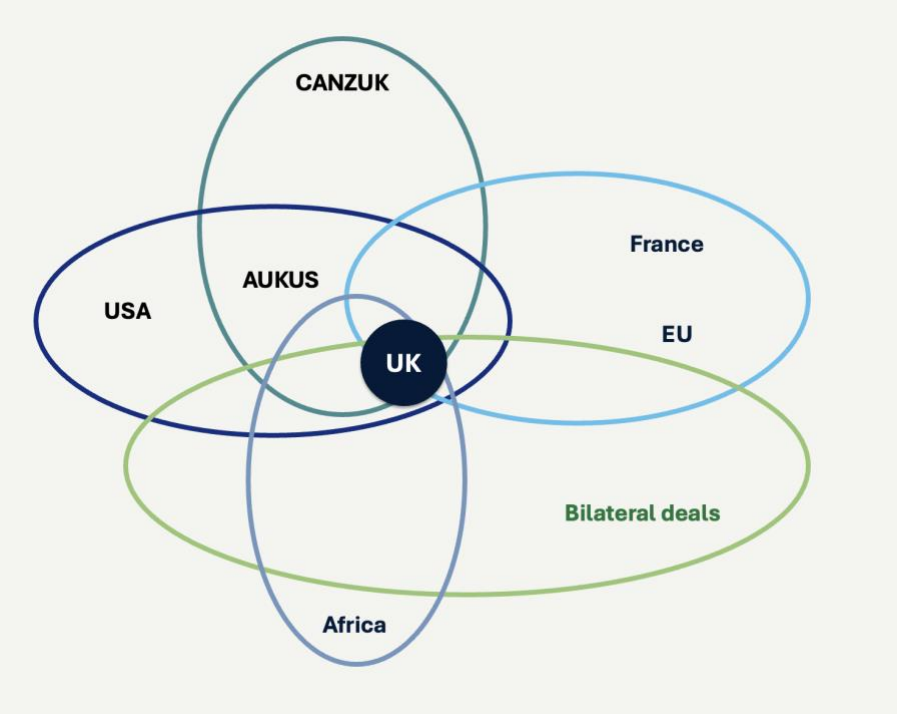
UNITED STATES OF AMERICA

The USA is the largest single national trading partner and destination and origin of UK investment. The USA is also the main UK defence partner and vital partner in technology and defence procurement.

The traditional interlocking circles of the British strategic interests

There is no reason why the UK should not pursue multiple interests and relationships in the world as long as they are sovereignty compliant and do not seem to be exclusive. The fact that the EU legal engineering is designed to impact on the UK's other trading partnerships should be a limitation on the depth of the UK-EU relationship.

The UK's overlapping international relationships



Conclusion

The UK-EU TCA is the most comprehensive free trade agreement the EU has signed and gives the UK access to the EU's Single Market tariff free and without the payments to the EU budget that member states have to pay. The UK is furthermore, outside the EU's Customs Union and regulatory zone and so free to conclude its own trade agreements based on UK economic interests.

While the UK has a trade agreement there are identified UK economic and political interests that could be negotiated in order to improve on the TCA. These are often minor and ones that were left out of the original trade negotiations. For instance, liberal cumulation rules, the certification of certification bodies, pet and human passport controls and a framework for touring musicians.

The current 'Reset' does not seek to tackle any of these issues but is instead based around the EU's economic interests, agricultural exports, students and youth mobility and electricity exports all at a substantial cost to the UK taxpayer. This is clearly not an agenda driven by the UK but more one based on the rhetoric of a 'deal at any cost' regardless of the contents.

We have seen this type of negotiation before in the years following the 2016 referendum. A UK government and parliament so keen on a deal they effectively (or literally) let the EU write it for them. We are still living with the consequences of that negotiation.

The real reset the UK should be seeking is to improve on the current TCA while removing the deficiencies with that and the WA. These include the NIP and fishing before adding the new problems caused by the current reset.

Fortunately, times have changed since the referendum and the EU's priorities may also have changed to one of a normal trading relationship with a neighbour rather than of a departing member. To that end it should now be possible to present a real workable alternative to the NIP in the form of 'Mutual Enforcement' a practice the EU itself pioneered.

The UK may have a new government in the future that has not accepted the reset and is pledged to renegotiate or leave the NIP. The EU should recognise that and seek to manage the process in a way that does not cause political friction. Ideally the EU will see the benefit of working with the UK on replacing the 'temporary' NIP with a more durable alternative without resorting to legal threats and actions that could easily cause wider problems. The talks should remain at a political level and preferably not rely on legal exchanges.

To maximise the chances of success the future UK government should identify its priorities and ensure that it has a domestic mandate and resolve to carry it through. The UK should work up alternatives to the NIP and be prepared to implement them unilaterally in good faith. The UK should identify its own trade interests and diversify its trade agreements to ensure freedom of action. Fortunately, the UK already has a developed and growing network of agreements with states more than happy to replace the EU's exports of agricultural products, something the EU will be well aware of. The UK should also plan for a worst-case scenario where the EU refuses to engage on legitimate UK concerns, this will involve presentation of its case internationally and ensuring any EU actions can be mitigated.

With careful planning and diplomatic work there is every chance the UK will succeed in improving the TCA and ironing out the constitutional and practical difficulties in the original negotiations.

Author

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Christopher Howarth is the Centre for a Better Britain's Parliamentary Liaison lead with over 15 years' experience in UK politics, first with the Conservative Party's response to the Lisbon Treaty, pre-Brexit proposals for EU reform and latterly with the European Research Group in Parliament during the passage of the 'Brexit deals'. Christopher was a Conservative Party Parliamentary candidate in 2019 and is the author of the novel 'The Durian Pact', based on his experience in politics.

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